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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 359.

THE NORFOLK AND WESTERN RAILROAD COMPANY,
PLAINTIFF IN ERROR,

vs.

EDMUND PENDLETON.

IN ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF
VIRGINIA.

FILED JANUARY 4, 1892.

(14,960.)

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a Supreme Court of Appeals of Virginia, at Wytheville.

NORFOLK & WESTERN R. R. CO.
vs.
EDMUND PENDLETON.

From the circuit court of Wythe county.

1 Supreme Court of Appeals of Virginia, at Wytheville.

NORFOLK AND WESTERN RAILROAD COMPANY
vs.
EDMUND PENDLETON.

Petition.

To the honorable judges of the supreme court of appeals of Virginia:

Your petitioner, "The Norfolk and Western Railroad Company," would respectfully show to your honors that it is aggrieved by a judgment of the circuit court of Wythe county, pronounced and entered on the — day of March, 1891, to wit, at the September term last of said court, in an action of debt, in which Edmond Pendleton was plaintiff and petitioner was defendant.

Petitioner presents herewith a full transcript of the record of said case, together with a copy of the said judgment, and prays that it may be considered as a part of this petition.

Petitioner is advised that the said circuit court erred in rejecting petitioner's special pleas offered in answer to plaintiff's declaration.

Petitioner is further advised that said circuit court also erred in overruling and rejecting petitioner's motion to said court to pronounce judgment in its favor, and in entering judgment in favor of the plaintiff; that petitioner succeeded, as a railroad company, to all the rights, privileges and franchises of "the Lynchburg and
Tennessee Railroad Company," and to those of the Virginia
2 and Tennessee Railroad Company, and of "the Atlantic,
Mississippi and Ohio Railroad Company," that by the express provisions of the charter of the said last-named company, which consolidated the said several railroad companies that constituted and composed the last-named company it is provided (Acts 1869–'70, ch. —, section 14) "that as the stock of the said Norfolk and Petersburg, Southside, Virginia and Tennessee, and Virginia and Kentucky Railroad Companies, respectively, shall be absorbed by the said Atlantic, Mississippi and Ohio Railroad Company, as contemplated in the terms of this act, the said company shall become absolutely vested with all the rights of franchise and of property which belong to the same;" that one of the said franchises of the said V. & T. R. R. Co. was the right prescribed by the third section of its charter, to wit:

"The tolls of said company shall be regulated and prescribed by the president and directors of said company, and the further right to regulate and fix its charges for transportation of freights; that these charters are contracts between the incorporators and stockholders and the said State of Virginia, which the said State has no power to impair, alter or amend without consent of the other parties to said contract; that petitioner as the purchaser of said consolidated lines of railway succeeded to and acquired all the said rights of franchise and property that belonged to the said several consolidated lines, respectively, and to the said A. M. & O. R. R. Co., and to the full benefits of said contracts with said State; that *that* acts of the legislature of the said State of Virginia, passed after the 24th day of March, 1848, the date of the charter of the said Lynchburg and Tennessee Railroad Company, do not apply to and are inoperative by the express provision of the acts themselves, (Code 1873, ch. 61, sec. 1, 13, 16) to the charter, rights and franchises of petitioner; and that, if they were so intended or could be so construed, as modifying, restraining and restricting the chartered franchises of petitioner, so far as petitioner's said franchises are, or were intented to be affected, said acts are unconstitutional and void."

For these and other errors to be assigned at bar petitioner prays your honors to review, reverse, annul and set aside said judgment, and to enter such a judgment in favor of petitioner as the said circuit court should have entered; and to this end will grant petitioner a writ of error and supersedeas to said judgment, and as in duty bound, &c.

N. & W. R. R. COMPANY,
By W. H. BOLLING, *Attorney*.

3 To the honorable judges of the supreme court of Virginia:

I respectfully certify to your honors that, in my opinion, there is such error in the judgment complained of, that the same should be reviewed and reversed by your honorable court.

Very respectfully, W. H. BOLLING.

Writ of error and supersedeas awarded. Bond required in penalty of $1,000.

L. L. LEWIS.

Ap'l 14, 1891.

To the clerk of the supreme court of appeals of Virginia, at Wytheville.

4 *Record.*

EDMUND PENDLETON
vs. } In Debt.
N. & W. RAILROAD COMPANY.

At a circuit court continued and held for Wythe county, Virginia, on the — day of March, A. D. 1891:

Declaration.

In the Circuit Court of Wythe County, to Wit:

Edmund Pendleton, plaintiff, complains of The Norfolk & Western Railroad Company, defendant, of a plea that it render unto the plaintiff the sum of sixteen hundred dollars, which to him the said defendant owes, and from him unjustly detains. For this, to wit, that theretofore, to wit, on the 9th day of April, 1888, the defendant was a railroad company and common carrier in the State of Virginia, and was engaged in the hauling and transportation of freight and passengers along its line of railway, for hire, and was subject to the laws of the State of Virginia, made and enacted in that behalf. And said defendant being such railroad company and common carrier as aforesaid, on the day and year aforesaid, and having been such for a long time before, and thence continued to be afterwards, received from the said plaintiff for shipment over the line of its railroad from the station Drapers, to the station at Barren Springs, on the day and year aforesaid, 25 sacks of specific manure, commonly called phosphate fertilizer, said 25 sacks of fertilizer weighing 5,000 pounds, and the distance between the two stations is — miles; and the said plaintiff avers that the defendant charged and received toll and freight from the defendant for the transportation of the said 25 sacks of fertilizer aforesaid, between the two points aforesaid, the sum of $3.50, being a greater *note* than the said defendants company aforesaid, is allowed to charge by the statutes of
5 Virginia, in such case made and provided, being in excess of four cents per ton per mile on the ton of 2,240 pounds; whereby, and by reason of the statute aforesaid, the defendant has become liable to the plaintiff in the penal sum of $100.00, part of the said sum above demanded.

Second.

And for this, to wit, that heretofore, to wit, on another day, to wit, on the 11th day of September, 1888, the defendant being a railroad company and common carrier, as set out in the first count above, received from the said plaintiff for shipment from Crockett's to Wytheville, stations on said road, 28 sacks of the same fertilizer as is named in the first count weighing 5,600 pounds; and upon the said 5,600 pounds of fertilizer the defendants charged and received from the plaintiff as toll or freight for the transportation of the same, between the points last aforesaid, the sum of $3.36, the same being a greater *note* than the defendant is allowed to receive by the statutes of Virginia in such case made and provided, whereby, the said defendant became liable to pay the plaintiff the penalty of $100.00, the same being another part of the said sum of $1,600.00 first above demanded.

Third.

And for this, to wit, that heretofore, to wit, on the 12th day of September, 1888, the said defendant being a railroad company and common carrier, as set out in the first count, received of the plaintiff for transportation, and did transport over its road from Wytheville to Crockett's, 5 bags of the same fertilizer as is set out in the first count, of the weight of 1,000 pounds, and for said transportation the said defendants charged and received from the said plaintiff the sum of 60 cents, which said sum is more than 4 cents per mile per ton of 2,240 pounds, and more than the said defendant is allowed by the laws of Virginia to charge and receive, whereby and by reason of said statutes of Virginia, the defendant has become liable to the plaintiff in the penalty of $100.00, another part of the said sum first above demanded.

Fourth.

And for this, to wit, that on the 9th day of September,
6 1888, the said defendant being a railroad company and common carrier, as set out in the first count, received of the plaintiff for transportation, and did transport over its said railroad from Wytheville to Crockett's, 13 sacks of the same fertilizer, as is set out in the first count, which weighed 2,600 pounds, and for said transportation said defendant charged and received from the plaintiff the sum of $1.56, which last-mentioned sum is more than 4 cents per mile per ton of 2,240 pounds, allowed by the statutes of Virginia, and by reason of which, and by reason of the statute in such case made and provided, the said defendant has become liable to the said plaintiff in the penalty of $100.00, another part of the said sum first above demanded.

Fifth.

And for this, that on the 9th day of September, 1888, the said defendant being a railroad company and common carrier, as set out in the first count, received from the plaintiff for transportation, and did transport over its line of railroad from Crockett's to Rural Retreat, 6 bags of the same fertilizer, as is set out in the first count, weighing 1,200 pounds, and for said transportation did charge and receive from the plaintiff the sum of 72 cents, which said sum is more than 4 cents per mile per ton of 2,240 pounds, which the defendant was allowed by the statutes of Virginia, to charge and receive of the plaintiff for such transportation, whereby and by reason of which the defendant became liable to the plaintiff in the penalty of $100.00, another part of the said sum first above demanded.

Sixth.

And for this, that on the 18th day of April, 1888, the said defendant being a railroad company and common carrier as set out in the first count above, received from the plaintiff for transportation, and did transport on its line of railroad from Wytheville to Max Mead-

ows, 8 bags of the same fertilizer, as set out in the first count, weighing 1,600 pounds, and the said defendant for said transportation did charge and receive of the plaintiff the sum of 96 cents, which said sum is more than 4 cents per ton of 2,240 pounds per mile, which said sum is more than defendant was allowed by the statutes of Virginia to charge and receive of the plaintiff for such transportation, as aforesaid, whereby, and by reason of which the de-
7 fendant became liable to the plaintiff in the penalty of $100.00, another part of the said sum first above demanded.

Seventh.

And for this, to wit, that on the 10th day of October, 1888, the defendant being a railroad company and common carrier, as set out in the first count above, received of the plaintiff for transportation, and did transport along the line of its railroad from Max Meadows to Wytheville, 25 bags of the same fertilizer as is set out in the first count, which weighed 5,000 pounds, and the plaintiff avers that for said transportation aforesaid, the defendant charged and received from the plaintiff the sum of $3.00, which said sum is more than four cents per ton of 2,240 pounds per mile, allowed by the laws of Virginia, to be charged and received by the said defendants, whereby, and by reason of which the said defendant has become liable to pay the plaintiff the penalty of $100.00, another part of the said sum first above demanded.

Eighth.

And for this, to wit, that heretofore, to wit, on the 21st day of April, 1888, the defendant being a railroad company and common carrier as set out in the first count above, received of the plaintiff for transportation, and did transport along the line of its railroad from Max Meadows to Ivanhoe, fourteen bags of the same fertilizer as is set out in the first count, which said fourteen bags weighed 2,800 pounds, and the plaintiff avers that for said transportation aforesaid, the defendant charged and received from the plaintiff $2.80, which said sum is more than 4 cents per ton of 2,240 pounds per mile allowed by the law of Virginia to be charged and received by the said defendant, whereby and by reason of which the said defendant has become liable to pay the plaintiff the penalty of $100.00, another part of said sum first above demanded.

Nineth.

And for this, to wit, that heretofore, to wit, on the 28 day of March, 1889, the defendant being a railroad company and common carrier as set out in the first count above, received from the
8 said plaintiff for transportation and did transport along the line of its railroad from Wytheville to Crockett's Station 10 bags of the same fertilizer as is set out in the first count, weighing 2,000 pounds, and for the transportation the defendant charged and received from the plaintiff a sum of $10.20, the same being a greater

amount than the defendant was allowed to receive by the statutes of Virginia in such case made and provided. Whereby and by reason of the aforesaid statute in such case made and provided the defendant became liable to pay to the plaintiff the penalty of $100.00, another part of the said sum first above demanded.

Tenth.

And for this, to wit, that heretofore, to wit, on the 28th day of March, 1889, the said defendant being a railroad company and common carrier as is set out in the first count above, received from the plaintiff for transportation, and did transport over its line of railroad from Wytheville to Crockett's, 20 bags of the same fertilizer, weighing 4,000 pounds, and for said transportation did charge and receive from the plaintiff the sum of $2.40, which said sum is more than 4 cents per mile per ton of 2.240 pounds which the defendant was allowed by the statute of Virginia to charge and receive of the plaintiff for such transportation. Whereby and by reason of which the defendant became liable to the plaintiff in the penalty of $100.00, another part of said sum first above demanded.

Eleventh.

And for this, that on the 15th day of April, 1889, the said defendant being a railroad company and common carrier as is set out in the first count above, received from the plaintiff for transportation and did transport over its line of railroad from Wytheville to Crockett's Station, 2 bags of the same fertilizer as is set out in the first count, weighing 400 pounds, and for said transportation did charge and receive from the plaintiff the sum of 25 cents, which said sum is more than 4 cents per mile per ton of 2,240 pounds which the defendant was allowed by the statute of Virginia to charge and receive of the plaintiff for said transportation, whereby and by reason of which the defendant became liable to plaintiff in the penalty of $100.00, another part of the said sum first above demanded.

9 Twelfth.

And for this, to wit, that heretofore, to wit, on the 19th day of April, 1889, the said defendant being a railroad company and common carrier as set out in the first count, received of the plaintiff for transportation and did transport over the line of its railroad from Foster's Falls to Barren Springs stations, 10 bags of the same fertilizer as is set out in the first count, which said 10 bags weighed 2,000 pounds, and for the same transportation the said defendant charged and received from the plaintiff the sum of $1.20, which said sum is more than 4 cents per ton of 2,240 pounds per mile, and more than said company is allowed by the laws of Virginia to charge and receive, whereby and by reason of the statutes of Virginia in such case made and provided, the defendant has become liable to the plaintiff in the penalty of $100.00, another part of said sum first above demanded.

Thirteenth.

And for this also heretofore to wit, on the 19th day of April, 1889, the said defendant being a railroad company and common carrier as is set out in the first count received of the plaintiff for transportation and did transport over the line of its railroad from Foster's Falls to Austinville stations, ten bags of the same fertilizer as is set out in the first count which said ten bags weighed 2,000 lbs., and for the said transportation the said defendant charged and received from the plaintiff the sum of $1.20 which said sum is more than 4 cents per ton of 2,240 lbs. per mile, the amount the defendant was allowed by law to have and receive from said plaintiff for said transportation. Whereby and by reason of the statute of Virginia in such case made and provided, the defendant has become liable to the plaintiff in the penalty of $100.00 another part of the said sum first above demanded.

Fourteenth.

And for this that on the 19th day of April, 1889, the said defendant being a railroad and common carrier as is set out in the first count, received from the plaintiff for transportation and did transport over the line of its railroad from Foster's Falls to Ivanhoe stations, 10 bags of the same fertilizer as is set out in the first count, which said ten bags weighed 2,000 lbs., and for the said
10 transportation the said defendant charged and did receive from the plaintiff the sum of $1.20, which said sum is more than 4 cents per ton of 2,240 lbs. per mile, which the defendant was allowed by law to charge and receive of the plaintiff for said transportation. Whereby and by reason of the statute in such cases made and provided the defendant has become liable to the plaintiff in the penalty of $100.00, another part of said sum first above demanded.

Fifteenth.

And for this; that, on the 15th day of April, 1889, the defendant being a railroad company and common carrier as is set out in the first count, received of the plaintiff for transportation and did transport over the line of its railroad from Wytheville to Max Meadows stations, 5 other bags of the same fertilizer; which said 5 bags weighed 1,000 lbs., and for said transportation did charge and receive from the plaintiff the sum of 60 cents, which said sum is more than 4 cents per ton of 2,240 lbs. per mile, allowed by the laws of Virginia for the defendant to charge and receive for *sich* transportation. Whereby and by reason of the statute in such case made and provided the defendent has become liable to the plaintiff in the penalty of $100.00, another part of said sum first above demanded.

Sixteenth.

And for this, that on the 15th day of April, 1889, the defendant being a railroad company and common carrier as is set out in the first count above received of the plaintiff for transportation, and did transport over the line of its railroad from Wytheville to Pulaski City stations, 2 tons of the same fertilizer, which said 2 tons weighed 2,000 lbs., and for said transportation did charge and receive from the plaintiff the sum of $3.20, which said sum is more than 4 cents per ton of 2,240 lbs. per mile allowed by the laws of Virginia for the defendant to charge and receive from the plaintiff for such transportation. Whereby and by reason of the statute in such case made and provided, the defendant has become liable to the plaintiff in the penalty of $100.00, residue of the said sum first above demanded.

And the plaintiff avers, that by the statutes of Virginia, and by
reason of the said several overcharges of freight and toll
11 aforesaid the said defendant has become liable to pay the
plaintiff the said several sums aforesaid which make up the
sum of the said several sums aforesaid, which make up the sum of
sixteen hundred dollars above demanded, and the said plaintiff is
entitled to have of and from the defendant the said several sums
aforesaid.

Nevertheless, the said defendant hath not paid to the plaintiff the said several sums of money nor any part thereof, but the same to pay hath hitherto wholly refused and still doth refuse, to the damage of the plaintiff $1,600, and therefore he brings his suit.

PEIRCE & POWELL, *p. q.*

Form of Car Bill and Receipt Filed with Declaration.

"All charges must be paid before the removal of goods.

No. 1839.

CROCKETT'S STATION, 9, 17, 1888.

Mr. Robert Gleaves to the Norfolk and Western Railroad Co., Dr.

For amount due on freight per *weigh* bill No. 1901, made at Wytheville, dated 9, 17, 1888.

Car.	Articles.	Weight.	Class.	Rate.	Fght. chgs.	Total.
	13 sks. ftz.	2,600	6	6	1.56	1.56

Received payment,

W. M. MARTIN, *Ag't.*"

Pleas.

1st plea. *Nil debet.*

2nd plea. And for a further plea in this behalf the defendant comes, and by *his* attorney says, that the said plaintiff ought not to have and maintain his said action against the said defendant, because the defendant says, that it is a railroad company, incorporated under a charter granted by the State of Virginia, on the 24th day of

March, 1848, and afterwards amended and re-enacted on the 6th day of March, 1849, and subject to the acts of the General Assembly of said State, passed on the 11th day of March, 1837, "prescrib*ed* certain general regulations for the incorporation of railroad companies," and that said defendant has never given its assent to the passing of
any law by the said General Assembly to change its tolls, as
12 prescribed by the said act of the 11th day of March, 1837;
and because the net profits of said defendant company have never amounted to the sum equal to the capital stock of said defendant company, with six per centum per annum interest thereon; and because the net profits of said defendant company have not been such that the said defendant company could declare out of the said profits, dividends exceeding the rate of fifteen per centum per annum on the capital stock invested by said defendant company at any time since its organization; and this it is ready to verify, and therefore the defendant prays, &c.

3rd plea. And for a further plea in this behalf the said defendant comes, and by *his* attorney says, that the said plaintiff ought not to have and maintain said action against this defendant, because, the defendant says, that at no time since its organization as aforesaid, have its rates of toll and transportation enabled its president and directors, after payment of all necessary expenses, and after setting apart a fair and reasonable sum for the renewal and repairs of its road, warehouses, depots, and other construction, and of its machines, cars, and other vehicles of transportation, to divide more than 15 per cent. on its capital stock invested; and this the said defendant is ready to verify; and therefore the defendant prays judgment, &c.

4th plea. And for a further plea in this behalf the said defendant comes, and by its attorney says, that the said plaintiff ought not to have and maintain his said action against this defendant, because, the defendant says, that the said General Assembly of the State of Virginia, by passing the charter incorporating said defendant railroad company, to wit: the said act of March 24th, 1848, and its various amendments, and the act of June 17th, 1870, "to authorize the formation of the Atlantic, Mississippi and Ohio Railroad Company," and the subsequent and various amendments of the said last-named act, entered into a contract with said defendant as to its rates of toll and transportation, and exhausted its, the said General Assembly's, power over the subject, and could not regulate nor reduce the said defendant's tolls and rates of transportation; and the said defendant is ready to verify by its said charter, to wit: said act of March 24th, 1848, and the amendment of the same; and any act or effort of said General Assembly to *to* regulate and reduce the said defendant's tolls and rates of transportation is unconstitutional and void; and therefore the defendant prays judgment, &c.

13 *Judgment and Bill of Exceptions.*

This day came again the parties by their attorneys and the court having maturely considered the questions of law arising on the demurrer of the defendant to the plaintiff's declaration in this case, doth overrule the same, and the plaintiff objected to the pleas of the defendant and the cause is continued.

Upon the trial of this cause the following facts were agreed —, to wit, that the freight charges set out in the plaintiff's declaration as made by the defendant company's agent against the plaintiff for the transportation of the fertilizers specified in said declaration are correctly stated, and that the said charges were paid by the plaintiff voluntarily and without objection, and that the distance over which the same were transported *are* substantially correct as well as the facts stated in the defendant's pleas, numbers 2, 3 and 4; and the matters of law and facts were submitted to the court; and the defendant company moved the court upon the said facts and law of the case to pronounce and enter judgment in favor of said defendant company; which motion of the said defendant company the court refused and overruled and entered a judgment in favor of the plaintiff in the words and figures following, to wit:

This day came again the parties by their attorneys, and the court having considered the objections to the pleas of the defendant, doth sustain the objections to pleas numbers 2, 3 and 4; whereupon, issue being joined on the plea of *nil debet*, by consent of the parties a jury was waived and the matters of law and fact were submitted to the court; and having heard the evidence it is considered by the court that the plaintiff recover against the defendant $800, part of the debt in the declaration mentioned (being $50 in each count of the declaration) with legal interest thereon from this date until payment, and his costs by him about his suit in this behalf expended; to which judgment the defendant excepted and tendered his bill of exceptions, which was rec-ived, signed and sealed by the court and ordered to be made part of the record in this cause.

D. W. BOLEN. [SEAL.]

In the Circuit Court of Wythe County.

EDMUND PENDLETON
vs.
NORFOLK AND WESTERN RAILROAD COMPANY.

14 Mr. Edmund Pendleton:

You are hereby notified that I shall apply to the clerk of the said court for a transcript of the record in this case.

Respectfully, W. H. BOLLING,
Counsel for Defendant.

April 13th, 1891.

Copy.
Teste: WM. B. FOSTER, *Cl'k.*

12,00, fee for transcript.

A copy.
Teste: WM. C. PENDLETON, *C. C.*

VIRGINIA:

In the clerk's office of the supreme court of appeals of Virginia, at Wytheville.

I, Wm. C. Pendleton, clerk of the supreme court of appeals of Virginia, at Wytheville, do hereby certify that the foregoing is a true copy of the record in case of N. & W. R. R. Co. *v.* Edmund Pendleton, heard at the June term, 1891.

Witness my hand and seal of office this 23rd day of December, 1891.

[Seal Supreme Court of Appeals of Virginia, Wytheville.]

WM. C. PENDLETON, *C. C.*

15 VIRGINIA:

In the Supreme Court of Appeals, held at the State Court-house, in the City of Richmond, on Monday, the 9th Day of November, 1891.

N. & W. R. R. Co., Pl't'ff,
vs.
EDMOND PENDLETON, Def't.

Upon a writ of error and supersedeas to a judgment rendered by the circuit court of Wythe county on the 7th day of March, 1891, for reasons appearing to the court, it is ordered that the judgment rendered herein at Staunton, on the 10th day of September, 1891, be, and the same is hereby, set aside and annulled. This cause, which is pending in this court at its place of session, at Wytheville, having been fully heard but not determined at said place of session, this day came here the parties, by their counsel, and the court, having
maturely considered the transcript of the record of the judg-
16 ment aforesaid and the arguments of counsel, is of opinion,
for reasons stated in writing and filed with the record, that there is no error in the said judgment. It is therefore considered that the same be affirmed, and that the defendant in error recover against the plaintiff in error damages according to law, and also his costs by him about his defence herein expended, which is ordered to be entered in the order book here and forthwith certified to the clerk of this court, at Wytheville, who shall enter the same in his order book and certify it to the said circuit court of Wythe county.

A copy.
Teste: GEO. K. TAYLOR, *C. C.*

Def't in error's costs at Richmond, 90cts.
A copy.
Teste: WM. C. PENDLETON, *C. C.*

17 NORFOLK & W. R. CO.
v.
PENDLETON.

(Supreme Court of Appeals of Virginia, September 10, 1891.)

LEWIS, *P.*:

This was an action of debt, in the circuit court of Wythe county, by Edmund Pendleton against The Norfolk & Western Railroad Company to recover penalties for alleged overcharges for the transportation of certain fertilizers. There was a judgment for the plaintiff for $800 and costs. The case, except as to the amount involved, is like the case of Railroad Co. *v.* Pendleton, 86 Va., 1004; 11 S. E. Rep., 1062, in which case a judgment in favor of the same plaintiff was affirmed. It is useless to repeat what was there said. It is enough to say that upon consideration we adhere to the ruling in that case, and are therefore of opinion, for the reasons given in that case, to affirm the judgment in the present case.

VIRGINIA:

In the clerk's office of the supreme court of appeals, at Wytheville.

The foregoing is a copy of the opinion of the court in the case of Norfolk & Western R. R. Co. *v.* Edmund Pendleton, heard at the June term, 1891.

Given under my hand and seal of office this 23rd day of December, 1891.

[Seal Supreme Court of Appeals of Virginia, Wytheville.]

WM. C. PENDLETON, *C. C.*

18 *Petition.*

THE NORFOLK AND WESTERN RAILROAD COMPANY
vs.
EDMUND PENDLETON.

To the Honorable Melville W. Fuller, Chief Justice of the United States:

Your petitioner, The Norfolk & Western Railroad Company, a corporation chartered, duly organized, and existing under the laws of the State of Virginia, would respectfully show to your honor that it is aggrieved by a final judgment rendered against your petitioner on the 9th day of November, A. D. 1891, by the supreme court of appeals of the State of Virginia, that being the highest court of the State in which a decision in the suit could be had, in an action brought by the said Edmund Pendleton against your petitioner to recover the penalty or forfeiture imposed by the 17th section of chapter 61 of the Code of Virginia of 1873, for demanding of and receiving from him greater amounts of toll than those allowed by the 18th section of the same chapter.

All the facts stated in the declaration and the pleas tendered by your petitioner were admitted to be true, the only defence made by your petitioner in the suit being that to hold it liable under the said 17th and 18th sections of chapter 61 of the Code of 1873 would deny to your petitioner the right to demand and receive such tolls as by its charter it is authorized to demand and receive, and would thus impair the obligation of the contract between the State and your petitioner.

The said supreme court of appeals held, er-oneously as your pe-
titioner is advised, that said 17th and 18th sections of chap-
19 ter 61 of the said code, under which suit was brought, did
not deprive your petitioner of any right to which it is entitled under its charter, and rendered final judgment accordingly against petitioner, being the penalty or forfeiture sued for; all of which will more fully appear from the record and proceedings in the said suit, a copy whereof is herewith filed, whereby it appears that manifest error has been committed, to the great damage of your petitioner.

Wherefore your petitioner prays for the allowance of a writ of error and supersedeas, and such other process as may cause the same to be corrected by the Supreme Court of the United States; and as in duty bound, &c.

W. J. ROBERTSON,
W. H. BOLLING,
Counsel for the Petitioner.

20 UNITED STATES OF AMERICA, *ss:*

Seal of the Supreme Court of the United States.

The President of the United States of America to the honorable the judges of the supreme court of appeals of the State Virginia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of appeals, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had, in the said suit between The Norfolk & Western Railroad Company, plaintiff in error, and Edmund Pendleton, defendant in error, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction

of a clause of the Constitution or of a treaty or statute of or
21 commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said plaintiff in error, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within 30 days from the date hereof, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 19th day of December, in the year of our Lord one thousand eight hundred and ninety-one.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—
MELVILLE W. FULLER,
Chief Justice of the U. S.

[Endorsed:] Writ of error.

22 UNITED STATES OF AMERICA, *ss:*

The President of the United States to Edmund Pendleton, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of appeals of the State of Virginia, wherein The Norfolk & Western Railroad Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 19th day of December, in the year of our Lord one thousand eight hundred and ninety-one.

MELVILLE W. FULLER,
Chief Justice of the U. S.

23 [Endorsed:] Citation.

On this thirtieth day of December, in the year of our Lord one thousand eight hundred and ninety-one, personally appeared John R. Bolling before me, the subscriber, a commissioner of the district court of the United States for the western district of Virginia, and makes oath that he delivered a true copy of the within citation to Edmund Pendleton.

Sworn to and subscribed the thirtieth day of December, A. D. 1891.

SAM'L WALTER,
U. S. Com'r, Wytheville, Va.

24 Know all men by these presents that we, W. H. Bolling and Francis P. B. Sands, as sureties, are held and firmly bound unto Edmund Pendleton in the full and just sum of two thousand dollars, to be paid to the said Edmund Pendleton, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 19th day of December, in the year of our Lord one thousand eight hundred and ninety-one.

Whereas lately, at a term of the supreme court of appeals of the State of Virginia, in a suit depending in said court between The Norfolk & Western Railroad Company, plaintiff in error, and Edmund Pendleton, defendant in error, a judgment was rendered against the said plaintiff in error, and the said plaintiff in error having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Edmund Pendleton, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington within 30 days from the date thereof:

Now, the condition of the above obligation is such that if the said plaintiff in error shall prosecute said writ to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) W. H. BOLLING. [SEAL.]
(Signed) FRANCIS P. B. SANDS. [SEAL.]

Sealed and delivered in presence of—

(Signed) JAMES D. MAHER.

Approved, to operate as a supersedeas.

(Signed) MELVILLE W. FULLER,
Chief Justice of the U. S.

25 [Endorsed:] Copy of bond.

DISTRICT OF COLUMBIA, } ss:
City of Washington, }

W. H. Bolling and Francis P. B. Sands, obligors in the within bond, being duly sworn, on their oaths depose and say each for himself that he is worth over and above all debts and liabilities the sum of two thousand dollars.

(Signed) W. H. BOLLING.
(Signed) F. P. B. SANDS.

Subscribed and sworn to before me this 19th day of December, A. D. 1891.

(Signed) JAMES D. MAHER,
[SEAL.] *Notary Public.*

Endorsed on cover: Case No. 14,960. Virginia supreme court of appeals. Term No., 359. The Norfolk & Western Railroad Company, plaintiff in error, *vs.* Edmund Pendleton. Filed January 4, 1892.

156-667

[illegible] COURT, U. S.
DEC 19 1894
JAMES H. McKENNEY,
CLERK.

No. 153. October Term, 1894.

Supreme Court of the United States.

◆

The Norfolk and Western Railroad Company, Plaintiff in Error,

vs.

Edmund Pendleton.

◆

IN ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF VIRGINIA.

◆

BRIEF FOR PLAINTIFF IN ERROR.

◆

WM. J. ROBERTSON,
W. H. BOLLING,
JOS. I. DORAN,
Of Counsel.

(14,624.)

Allen, Lane & Scott, Prs., Phila.

SUPREME COURT OF THE UNITED STATES.

October Term, 1894. No. 153. (14,624.)

The Norfolk and Western Railroad Company, Plaintiff in Error, vs. *Edmund Pendleton.*	IN ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF VIRGINIA.

I.

STATEMENT OF THE CASE.

The Act of the Legislature of Virginia of March 11th, 1837 (Acts of 1837, page 101), prescribing general regulations of railroad companies and their incorporation (entitled "An Act prescribing certain regulations for the incorporation of railroad companies"), provided that any part of a charter or Act of Incorporation thereafter granted by the legislature should be subject to amendment by any future legislature, "*except so much thereof as prescribes the rate of compensation or toll for transportation.*"

Subsequently, on the 24th day of March, 1848, and while the Act of March 11th, 1837, above referred to, was in force, the Legislature of Virginia passed an Act to incorporate the Lynchburg and Tennessee Railroad Company. One of the franchises given to this company was that tolls of the company should be regulated and prescribed by the president and directors of said company, unless and until fifteen per cent. should be earned upon the capital invested, which, as is shown by the record, has never been done, and once granted the Legislature of Virginia had no power to take this franchise away. Afterwards on the 6th day of March, 1849, while the Act of March 11th, 1837 was still in force, the Legislature of Virginia passed an Act amending the charter of the Lynchburg and Tennessee Railroad Company, and changing the name to the "Virginia and Tennessee Railroad Company," and by the first section of the Act vested in the Virginia and Tennessee Railroad Company the same franchise to regulate tolls as was vested in the Lynchburg and Tennessee Railroad Company.

The Act of 1837 provided *inter alia* :—

"SECTION 1. *Be it enacted by the General Assembly*, That whenever it shall be deemed necessary by the General Assembly to grant a charter for the incorporation of a company, to construct a railroad, the following general provisions shall be deemed and taken to be a part of the said charter or act of incorporation ; to the same effect as if the same were expressly re-enacted in reference to any such charter or Act, except so far as such charter or Act may otherwise expressly provide.

* * * * * * * * * *

SECTION 35. Any part of any charter or Act of incorporation granted agreeably to the provisions of this Act, shall be subject to be altered, amended, or modified by any future Legislature, as to them shall seem proper ; *except so much thereof as prescribes the rate of compensation or tolls for transportation ; Provided*, That the rights of property acquired under this Act, or any other adopting the provisons of this Act, shall not be taken away or impaired by any future Act of the legislature."

The second and third sections of the Act of March 24th, 1848, incorporating the Lynchburg and Tennessee Railroad Company, provided :—

"2. *Be it further enacted*, That whenever twelve hundred shares of stock shall have been subscribed, the subscribers, their executors, administrators, and assigns, shall be and they are hereby declared to be a body politic and corporate under the name and style of 'The Lynchburg and Tennessee Railroad Company,' and shall be subject to all the provisions of the Act, '*prescribing certain general regulations for the incorporation of railroad companies, passed March 11th, 1837, and the amendments thereto*.'

"3 All machines, wagons, vehicles, or carriages belonging to the Company, together with all their works and all profits which shall accrue from the same, shall be vested in the respective shareholders forever, in proportion to their respective shares, and shall be deemed personal estate. *The tolls of said Company shall be regulated and prescribed by the President and Directors of said Company :* Provided, however, *That* *if at any time hereafter the rates of toll and transportation shall enable the President and Directors, after payment of all necessary expenses, and after setting apart a fair and reasonable sum for the renewal and repairs of the road, warehouses, depots, and other constructions, and of the machines, cars, and other vehicles of transportation, to divide more than fifteen per cent. on their capital stock invested, then the Legislature may regulate and reduce the tolls and transportation so as to enable the Company to divide fifteen per cent. and no more:* and as soon as any ten miles of said road shall be completed, the President and Directors of the Company shall semi-annually declare and make such dividend of the net profits of their tolls, as they may deem advisable, to be divided among the proprietors of the stock in proportion to their respective shares."

Under the authority of these Acts, and in strict conformity with their provisions, the Virginia and Tennessee Railroad Company was organized, and the railroad was built on its present line from Lynchburg, Va., to Bristol, a point on the line between the States of Virginia and Tennessee, its western terminus, a distance of about 204 miles. This road was operated under the provisions and franchises of its charter, by the Virginia and Tennessee Railroad Company, continuously from the year 1855, when it was completed to Bristol, until November 12th, 1870, when the Atlantic, Mississippi and Ohio Railroad Company was organized in accordance with and under the provisions of an Act of the General Assembly of Virginia, passed June 17th, 1870, entitled, "An Act to authorize the formation of the Atlantic, Mississippi and Ohio Railroad Company." (Appendix, page 10.)

The Atlantic, Mississippi and Ohio Railroad Company was organized for the purpose of acquiring the property and franchises of the Norfolk and Petersburg Railroad Company, owning and operating a railroad from Norfolk, Va., to Petersburg, Va.; the Southside Railroad Company, owning and operating a railroad from Petersburg, Va., to Lynchburg, Va., and the Virginia and Tennessee Railroad Company, owning and operating a railroad from Lynchburg, Va., to Bristol, Tenn.

The fifth section of this Act prescribes that—

"The said Atlantic, Mississippi and Ohio Railroad Company shall be a body corporate and politic, vested with all the rights and privileges conferred by the laws of the Commonwealth and subject to such as apply to railroad corporations thereof generally."

And section 14 provides—

> "That as the stock of the said Norfolk and Petersburg, Southside, Virginia and Tennessee, and Virginia and Kentucky Railroad Companies (the several companies authorized, by the Act, to subscribe to and be absorbed by the Atlantic, Mississippi and Ohio Railroad Company) respectively, shall be absorbed by the said Atlantic, Mississippi and Ohio Railroad Company, as contemplated in the terms of this Act, the said Company shall become absolutely vested with all the rights of franchise and of property which belong to the same: *Provided*, That a separate account of the property, receipts, and expenses, as to each of the aforesaid railroad companies intended to be absorbed by the operations of this Act, shall be kept, in so far as to protect the claims and preserve the rights of stock and bondholders, and of such creditors and stockholders as to each of the said roads as may remain unsatisfied by the Atlantic, Mississippi and Ohio Railroad Company."

In accordance with the provisions of this Act the commissioners appointed by the first section performed the duties required of them and called together the subscribers to the stock of the Atlantic, Mississippi and Ohio Railroad Company to meet in Lynchburg, Va., on September 15th, 1870. The subscribers met at the time and place named and adjourned from time to time until the twelfth day of November, 1870, and on that day the organization of the Atlantic, Mississippi and Ohio Railroad Company was completed in strict conformity to the provisions of the Act, and the commissioners were declared *functus officio*.

From that time the Atlantic, Mississippi and Ohio Railroad Company operated the said line of railroad from Norfolk, Va., to Bristol, Tenn., under one general management, and continued to so manage and operate the said line until decree of the United States Circuit Court was entered in the cause of Francis Skiddy *et al.*, trustees, *vs.* The Atlantic, Mississippi and Ohio Railroad Company upon a bill filed in March, 1876, to foreclose certain mortgages executed by the said Atlantic, Mississippi and Ohio Railroad Company to the plaintiffs, and praying for a sale of the property of the said defendant to pay and satisfy certain creditors, holders of bonds issued under said mortgage. This case is reported in 3 Hughes, C. C. Rep., page 320, and to which we desire to call the attention of the court.

Under the proceedings and decrees in this cause the works, property, and franchises of the Atlantic, Mississippi and Ohio Railroad Company were sold, and the Norfolk and Western Railroad Company was designated as the corporation created by the sale, and vested with all the property, works, and franchises of the Atlantic, Mississippi and Ohio Railroad Company. By deed of May 3d, 1881, the works, property, and franchises were conveyed to the Norfolk and Western Railroad Company, and that company became thereby a corporation and the owner of all the works, property, and franchises of the said Atlantic, Mississippi and Ohio Railroad Company, pursuant to and in conformity with the provisions of sections 44, 45, and 58 of the Code of Virginia of 1873.

From the date of said conveyance, May 3d, 1881, the said line of railroad from Norfolk to Bristol has been known as the Norfolk and Western Railroad, and has been operated and managed by the Norfolk and Western Railroad Company.

In August, 1889, Edmund Pendleton, the defendant in error here, brought his suit against the plaintiff in error; and in his declaration complained that—

> "The defendant company being a common carrier in the State of Virginia, engaged in hauling freight and passengers along its line of railway, for hire, and being subject to the laws of the State of Virginia made and enacted in that behalf, and that on the first day of January, 1887, the company received from him for shipment over its line of railway, from its station at Wytheville to other points on its line of railroad in the county of Wythe, eight several parcels of specific manure, and that the company charged and received toll and freight from him for these several parcels of fertilizer at a greater rate than the company was allowed to charge by the statute of Virginia, being in excess of four cents per ton per mile on the ton of twenty-two hundred and forty pounds; whereby, and by reason of which, the defendant company became liable to him in the penal sum of $100 for each shipment, and had thereby become liable to pay him the said several sums which make up the sum of $800 as demanded."

(Printed record, page 3.)

The general laws of the State of Virginia referred to in the declaration, and relied upon by defendant in error to govern the rates of toll to be charged by railroad companies in Virginia, and as governing the charges of this road, are found in chapter

61, Code of Virginia, 1873, section 1, 17 and 18. (Appendix, page 19.)

The provisions of the Act of the eleventh day of March, 1837, prescribing certain general regulations for the incorporation of railroad companies (Acts 1837, pages 101 to 112), in so far as they are material, have already been quoted.

We call attention to the fact that Wytheville, the point at which this fertilizer was received for shipment, is upon the original line of the Virginia and Tennessee Railroad, and all the points of destination are to points on the same line.

To this declaration the defendant pleaded the general issue and filed three special pleas, which are found on pages 6 and 7 of the printed record, which pleas were admitted to be true and were made a part of the statement of facts upon which the case was submitted to the court for its judgment.

These pleas in substance deny that the defendant company is subject to the general law (known as the Act of January 14th, 1853) of Virginia regulating tolls upon railroads, under which general law the suit had been brought, its president and directors having under its charter a right to regulate and prescribe its tolls upon the portion of the road over which the charges complained of were made, the rates of toll and transportation having at no time enabled the president and directors to divide as much as fifteen per cent. upon the capital stock invested.

Upon the agreed facts (pages 6 and 7 of the record) the court rendered a judgment against the defendant for the minimum fine, twenty-five dollars, on each count of the declaration—in the aggregate $200.

From this judgment the company obtained a writ of error and *supersedeas* from the Supreme Court of Appeals of Virginia. The case was heard in that court, and the judgment of the court below affirmed, in an opinion read by the president of the court, and which is found on page 10 of the printed record. From this judgment the defendant company obtained a writ of error, now under consideration by this court.

II.

SPECIFICATION OF ERRORS.

It is respectfully insisted that the Supreme Court of Appeals of Virginia erred in holding that the plaintiff in error was deprived, by the Act of 14th January, 1853 (section 18 of chapter 61 of the Code of 1873), of the right to have its tolls regulated and prescribed by its president and directors, as provided for by the third section of the Act of 24th March, 1848, incorporating the Lynchburg and Tennessee Railroad Company, thus disregarding and impairing the obligation of the contract between said Lynchburg and Tennessee Railroad Company and the State of Virginia, to the full benefit of which contract the plaintiff in error had become and now is entitled.

III.

BRIEF OF ARGUMENT.

The decision of the Supreme Court of Appeals of Virginia in the case at bar (page 10 of the Record), was adverse to the plaintiff in error, and declared that its charter and those of its predecessors did not constitute a charter contract as to the right to fix tolls, &c. This brings the case within the rule that enables this court to review the decision of a State court upon State legislation, and to enforce the provision of the Federal Constitution declaring that no State shall pass any law impairing the obligation of contracts.

In State Bank of Ohio *vs.* Knoop, 16 How., 369 (1853), Mr. Justice McLean said :—

> "The rule observed by this court to follow the statute of the State by its Supreme Court is strongly urged. This is done when we are required to administer the laws of the State. The established construction of a statute of the State is received as a part of the statute. But we are called in the case before us not to carry into effect a law of the State, but to test the validity of such a law by the Constitution of the Union. We are exercising an appellate jurisdiction. The decision of the Supreme Court of the State is before us for revision, and if their construction of the contract in question impairs its obligation, we are required to reverse their judgment. To follow the construction of a State court in such a

case would be to surrender one of the most important provisions in the Federal Constitution."

In Ohio Life Insurance, &c., Co. *vs.* Debolt, 16 How., 416 (1853), Mr. Chief Justice Taney said :—

> "It has been contended, on behalf of the defendant in error (the Treasurer of the State), that the construction given to these Acts of Assembly by the State courts ought to be regarded as conclusive. It is said that they are laws of the State, and that this court always follows the construction given by the State courts to their own Constitution and laws. But this rule of interpretation is confined to ordinary acts of legislation, and does not extend to the contracts of the State, although they should be made in the form of a law. For it would be impossible for this court to exercise any appellate power in a case of this kind, unless it was at liberty to interpret for itself the instrument relied on as the contract between the parties. It must necessarily decide whether the words used are words of contract, and what is their true meaning, before it can determine whether the obligation, the instrument created, has or has not been impaired by the law complained of. And in forming its judgment upon this subject, it can make no difference whether the instrument claimed to be a contract is in the form of a law passed by the legislature, or of a covenant or agreement by one of its agents acting under the authority of the State."

See also—

Jefferson Branch Bank *vs.* Skelly, 1 Black, 436, 433 ;
Wright *vs.* Nagle, 101 U. S., 791, 793.

In Louisville, &c., R. Co. *vs.* Palmes, 109 U. S., 244 (1883), Mr. Justice Matthews, said :—

> "The question we have to consider and decide is, whether in the judgment under review, the Supreme Court of Florida gave effect to a law of the State, which, in violation of the Constitution of the United States, impairs the obligation of a contract. In reaching a conclusion on that point, we decide for ourselves, independently of the decision of the State court, whether there is a contract, and whether its obligation is impaired ; and if the decision of the question as to the existence of the alleged contract requires a construction of State constitutions and laws, we are not necessarily governed by previous decisions of the State courts upon the same or similar points, except where they have been so firmly established as to constitute a rule of property. Such has been the uniform and well-settled doctrine of this court. * * * It is true that in all these cases the State court, whose judgments were brought into review, had construed the statutes as not creating a contract ; but the principle is equally applicable in the Converse case. (Burgess *vs.* Seligman, 107 U. S , 20.)"

Coming, then, to the consideration of the main question to be considered, there are two points for the decision of this court :—

First.—Does the Act of the Legislature of Virginia, approved June 17th, 1870, "To authorize the formation of the Atlantic, Mississippi and Ohio Railroad Company," confer upon that company the franchise to regulate by its president and board of directors the tolls of the company, which was given to the Virginia and Tennessee Railroad Company, by the Act of March 24th, 1848, as prescribed in the third section of the last named Act ?

Second.—Do the provisions of the Act of January 14th, 1853, found in the Code of 1873, chapter 61, section 18, prescribing general regulations for the government of railroads. upon which other rates are not prescribed by law, apply to the Atlantic, Mississippi and Ohio Railroad Company, or to the plaintiff in error, its successor ? If so, is not this law, so far as it affects the plaintiff in error, unconstitutional and void, as obnoxious to that clause of the Constitution that prohibits the State from passing any law to impair the obligation of a contract ?

It is manifest, in reading the Act of June 17th, 1870, "To authorize the formation of the Atlantic, Mississippi and Ohio Railroad Company," that it was not the intent and purpose of the legislature by creating a new corporation to dissolve the old corporations of the Norfolk and Petersburg, Southside, Virginia and Tennessee, and Virginia and Kentucky Railroad Companies, the object being to merge these companies by the union of the several independent corporations, named in the Act, into a single company, and the incorporation of the latter with the combined rights, privileges, and franchises of each of them.

Whether consolidation works a dissolution of the former corporation in a given case, depends upon the legislative intent manifested in the Act under which the consolidation takes place.

Central R. R., &c., Co. *vs.* Georgia, 92 U. S., 665 ;
C. & O. R. Co. *vs.* Virginia, 27 Grat., 344. Same case, 94 U. S., 718.

The shareholders and creditors of these several corporations, intended to be absorbed into a consolidated management to be known as the Atlantic, Mississippi and Ohio Railroad Company, certainly had the right to maintain in the courts that the legislature had no power or authority to take away any of the property, rights, franchises, or privileges of these several companies, so as, in any way, to affect or lessen their security, and that any Act of the legislature intending to affect these securities was void and unconstitutional. The legislature, we must presume, was fully cognizant of these rights of the shareholders and creditors. That it is true, is manifest from the provisions of all the Acts affecting or effecting this consolidation or absorption of these several companies. It was necessary to the preservation of these rights that the consolidated company should be given all of the franchises of the several companies so absorbed. This the Acts carefully guard and preserve.

By the terms of the Act of June 17th, 1870, it is expressly provided that, until the whole of the stock of each of these several companies should be absorbed by the consolidated company, the latter should become only a stockholder in the said several companies, entitled to representation in the meetings of stockholders of those companies, with a right to vote only so much of the said stock as had been subscribed by, transferred to, and assigned to it, and that the consolidated companies should have no other relation to the several companies than that held by the subscribers of the stock of those companies to its own stock.

It was therefore necessary for the legislature, in permitting the Atlantic, Mississippi and Ohio Railroad Company to obtain the management and control of these several independent companies, when it should have absorbed a majority of the stock of those companies, to grant and transfer to this consolidated management all the rights, franchises, and privileges as well as the property and works of the several roads so absorbed. This is expressly and clearly done by the fourteenth section of the Act of June 17th, 1870, which declared:—

> "That as the stock of the Norfolk and Petersburg, Southside, Virginia and Tennessee, and Virginia and Kentucky Railroad Companies, respectively, shall be absorbed by the said Atlantic, Mississippi and Ohio Railroad Company, as contemplated in the terms of this Act, the said company shall become absolutely vested with all the rights and franchises and of property which belong to the same."

And this construction is emphasized by the further provision in the same section :—

> "That a separate account of the property, receipts, and expenses as to each of the aforesaid railroad companies, intended to be absorbed by the operations of this Act, shall be kept in so far as to protect the claims and preserve the rights of stock and bondholders, and of such creditors and stockholders as to each of the said roads as may remain unabsorbed by the Atlantic, Mississippi and Ohio Railroad Company."

It was held by the judgment from which this writ of error was allowed, that because the Atlantic, Mississippi and Ohio Railroad Company was, by the fifth section of its charter, made subject to such laws as apply to the railroad corporations of the State "*generally*," it did not become entitled to the benefit of the third section of the charter of the Virginia and Tennessee Railroad Company, although the fourteenth section of its charter declared that it should "become absolutely vested with *all the rights of franchise* and of property which belonged to said 'Virginia and Tennessee Railroad Company.'"

The reason assigned for this conclusion was that the Act of 14th January, 1853, being a law applicable to the railroad corporations of the State "*generally*," deprived the Atlantic, Mississippi and Ohio Railroad Company of the right to charge tolls in the manner prescribed by the third section of the charter of the Lynchburg and Tennessee Railroad Company, in effect repealing that section, so far as it relates to tolls, and making it incumbent upon the Atlantic, Mississippi and Ohio Railroad Company to charge such tolls, and such tolls only, as are prescribed by said Act of January 14th, 1853.

It was so held, notwithstanding the fact that said Act of 14th January 1853 expressly declared that it should apply only to railroads "*on which different rates are not prescribed by law.*"

It would hardly be contended that the rates of toll prescribed by the Act of 14th January, 1853, are not "*different*" from rates to be "regulated and prescribed by the president and directors of the company," which could not be regulated or reduced by the legislature until the company should be able to make a dividend of fifteen per cent. on its capital stock, after setting apart a fair and reasonable sum for renewal and repairs, as provided by the third section of the charter of the Virginia and Tennessee Railroad Company; and it is difficult to understand how it can have been supposed that the Act of 14th January, 1853, had any application to the tolls which the Atlantic, Mississippi and Ohio Railroad Company was authorized to charge under the charter of the Virginia and Tennessee Railroad Company.

It is to be observed, moreover, that the Virginia and Tennessee Railroad Company was, by its charter (Act of 24th March, 1848, it being then named the Lynchburg and Tennessee Railroad Company), made subject to the Act of 11th March, 1837—

> "Prescribing certain general regulations for the incorporation of railroad companies," the thirty-fifth section of which last-mentioned Act provided that, "Any part of any charter or Act of incorporation granted agreeably to the provisions of this Act, shall be subject to be altered, amended, or modified, by any future legislature, as to them may seem proper; *except so much thereof as prescribes the rate of compensation or tolls for transportation.*"

It is also to be observed that the fifty-eighth section of chapter 61 of the Code of 1873, provides that—

> "The charter of every company which is governed by the Act passed on the eleventh day of March, 1837, prescribing certain general regulations for the incorporation of railroad companies, and of every company hereafter incorporated, which shall be governed by this chapter, may be altered or modified by any future legislature, as may seem to it proper, except that no law shall be passed for taking from a company its works or property without making to it just compensation, or for *changing its tolls without its assent in any other cases than such as are specially provided for in this chapter.*

And there is nothing in the charter indicating a purpose to attempt to take away from railroad companies such as the Virginia and Tennessee Railroad Company and its successors, the Atlantic, Mississippi and Ohio Railroad Company or from the Norfolk and Western Railroad Company the right to regulate tolls as given in the third section of the Act incorporating the Lynchburg and Tennessee Company.

Sections 44, 45, and 58 of chapter 61 of the Virginia Code of 1873 (see Appendix, page 18) is the same in effect, with the section above quoted, so that the railroad companies of Virginia which are subject to the laws which apply to railroad companies generally in that State, have been, since the eleventh day of March, 1837, and still are, protected by statute against a change of their tolls without their assent in any other cases than such as are specially provided by law.

It cannot be claimed that there is any special provision of law authorizing the legislature to deprive the Lynchburg and Tennessee Railroad Company, or its successors, of the benefit of the third section of its charter, under which its tolls are to be regulated and prescribed by the president and directors of the company; and it is difficult to understand how the mind of the Supreme Court of Appeals of Virginia was brought to the conclusion that this was accomplished by the Act of 14th January, 1853.

This was not a consolidation of the several companies, intended to be absorbed by the Atlantic, Mississippi and Ohio Railroad Company, in the meaning frequently given to consolidation, and which has been defined by this court in several cases.

> The Atlantic & Gulf R. Co. *vs.* Georgia, 8 Otto., 359, 366;
>
> Shields *vs.* Ohio, 95 U. S., 357;
>
> Wabash, St. L. & P. R. Co. *vs.* Ham *et al.*, 114 U. S., 387–598.

In the case last cited Mr. Justice Gray said:—

> "But upon the consolidation, under express authority of statute, of two or more solvent corporations, the business of the old corporations is not wound up nor their property sequestered or disturbed, but the very object of the consolidation, and of the statutes which permit it, is to continue the business of the old corporations. Whether the old corporations

are dissolved into the new corporation, or are continued in existence under a new name, and with new powers, and whether, in either case, the consolidated company takes the property of each of the old corporations charged with a lien for the payment of the debts of that corporation, depends upon the terms of the agreement of consolidation, and of the statute under whose authority that consolidation is effected."

Section 5 of the Act of 17th June, 1870, by which the Atlantic, Mississippi and Ohio was called into existence, makes the general laws of the State, applicable to railroad companies, a part of the charter of that company. Are these general laws inconsistent with the provisions and grants of the fourteenth section of that Act? We submit, that the effect of the language of the fourteenth section is just the same as if the legislature had copied the whole of section 3 of the Act of March 24th, 1848, entitled "An Act to incorporate the Lynchburg and Tennessee Railroad Company," *ipsissimis verbis*, into the charter of the Atlantic, Mississippi and Ohio Railroad Company. Can it be said that the legislature exceeded its authority, or that this charter is inconsistent and destroys the right of franchise given in section 14, and that the legislature meant nothing when it declared that the consolidated company should be vested with "All the rights and franchises" of the several companies composing it?

Section 14 cannot be construed to give one or several of the franchises of the several roads, and not all of them.

If it is inoperative to give all, it is equally ineffectual to give any.

The general law declares (chapter 61, Code 1873, sections 1 and 18) that these laws shall apply only to railroad companies whose charters do not provide otherwise. The legislature has still the power to charter a railway company and to give it the right of franchise to regulate its tolls and passenger fares, and at the same time to make it subject to all of the laws of the State applicable to railroad companies generally, and the two provisions would be perfectly consistent and would be so declared by the courts.

It is not difficult to arrive at the intention and the reasons of the legislature for giving to the Atlantic, Mississippi and Ohio Railroad Company the same "*rights of franchise that belong to the several corporations merged into this consolidation.*" And we must presume that these reasons influenced the legislature to vest these rights of franchise in this company; they furnish a proper and legitimate source to which we may go to ascertain the intention of the legislature.

At the time the Lynchburg and Tennessee Railroad Company was chartered, the building of such a line of railway was a herculean task, regarded by many as an impossible undertaking. The legislature recognized the difficulty of the undertaking, and at the same time the great importance of this line to the State. In the preamble to the Act of March 24th, 1848, incorporating that company, it uses this language:—

> "The General Assembly of Virginia regards a railroad connection with its South-western Territory of great importance; and believes that with the assent and co-operation of the State of Tennessee, an extension of the same to a point at or near the town of Memphis would establish a communication between the Atlantic Ocean and the Mississippi River, promotive of the great purposes of international intercourse and of national defense."

The legislature felt the necessity to give as large and liberal rights of franchise to this company as might properly be done, in order to induce citizens of Virginia to invest their money in this enterprise and accomplish the much-desired connection; the State itself subscribed largely; the city of Lynchburg was induced to subscribe very largely, the legislature authorizing the city to subscribe $500,000.

All of these subscriptions were based upon the contract with the State contained in this charter, and in the belief that the legislature in good faith would protect the interests of the stockholders. In this belief money was obtained and the road was built. Subsequently, the Southside and Norfolk and Petersburg Railroads were chartered and built; the State of Tennessee had chartered roads that had been constructed from Memphis to Bristol, thus making the connection between the Atlantic and Mississippi, so much desired by the State of Virginia.

In 1870, when the question of consolidation of these several Virginia roads was brought before the legislature, this state of things existed and was urged and prevailed with the legislature, to wit, that these roads operated under distinct managements, and as separate organizations were ineffectual to accomplish what was desired and to procure for the State what had been anticipated from this connection; that by a consolidation of these several roads the State would realize its hopes; that the city of Norfolk, with its splendid harbor, would become a great commercial city of the Atlantic coast; that the vast resources of Southwest Virginia would be developed and its coal and iron put upon the markets of the world. With this in view the legislature passed the Act of June 17th, 1870, incorporating the Atlantic, Mississippi and Ohio Railroad Company. It was not the purpose of the legislature to curtail or diminish any of the rights or franchises of the old corporations. On the contrary, the intention still was to accomplish the great purposes of the Act of March 24th, 1848. The legislature felt the obligation upon it to take care of and protect the vested rights of the stockholders of these several railroad companies and of the State, which was the largest stockholder.

Again they were met, in passing this Act of consolidation, with the constitutional provision that prohibits a State from passing any law impairing the obligation of a contract. Consolidation was not a dissolution of these corporations. The legislature had no power to compel a dissolution. It was a merger of the several corporations into one, and that only by and with the consent of the stockholders of the several independent corporations—the only way in which the legislature could authorize it to be done. Therefore, in passing a consolidation Act there was a binding necessity that the rights of the individual stockholder should be guarded and preserved intact. And we find that such was the intent and purpose of the legislature expressed throughout this Act. We call attention to section 3, which provides—

"That no stockholder in any one of said companies shall be required to subscribe or merge his stock in the capital stock of the said Atlantic, Mississippi and Ohio Railroad Company without his consent, or except on terms agreed to by said stockholder."

We refer specially also to section 7 and to the last clause of section 14 which provides that—

> "A separate account of the property, receipts, and expenses, as to each of the aforesaid railroad companies intended to be absorbed by the operation of this Act, shall be kept, in so far as to protect the claims and preserve the rights of stock and bondholders, and of such creditors and stockholders as to each of the said roads as may remain unsatisfied by the Atlantic, Mississippi and Ohio Railroad Company."

Thus the legislature expressly required the consolidated company to keep separate accounts for the different roads of which it was composed, so as to protect the claims and preserve the rights of the individual stockholder, bondholder, and creditor of said roads respectively. Certainly, then, the legislature never intended to and did not diminish the resources from which receipts were to be derived; and if it had done so, we respectfully submit that the Act would have been void as obnoxious to that clause of the Constitution already adverted to; each stockholder and bondholder of the Virginia and Tennessee Railroad Company having an indisputable right to have all his chartered rights of franchise preserved, so that his claims, rights, and security should not be diminished.

We must presume, indeed the presumption is positive, that the legislature understood those rights, and intended to preserve them when it passed this Act that gave to the Atlantic, Mississippi and Ohio Railroad Company all the rights of franchise of the Virginia and Tennessee Railroad Company, among them, the right for its president and directors "to regulate and prescribe the tolls of said company;" and then charged them with the duty to keep a separate account of these receipts, so as to protect the claims and preserve the rights of any stockholder, bondholder, or creditor who might remain unsatisfied, to wit: whom the said Atlantic, Mississippi and Ohio Railroad Company might not be able to induce to accept the terms and provisions of the Act "intended to absorb" their own corporation. We respectfully submit that this Act of consolidation gave the right of franchise to the Atlantic, Mississippi and Ohio Railroad Company, and to the plaintiff in error as its successor, to prescribe and regulate its tolls by its president and board of directors. The judgment of the Supreme Court of Appeals impaired the obligation of a charter contract between the State of Virginia and the plaintiff in error. The judgment should accordingly be reversed and judgment entered for plaintiff in error.

WM. J. ROBERTSON,
W. H. BOLLING,
JOS. I. DORAN,
Of Counsel.

156-607

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No. 153. October Term, 1894.

Supreme Court of the United States.

The Norfolk and Western Railroad Company,
Plaintiff in Error,

vs.

Edmund Pendleton.

IN ERROR TO THE SUPREME COURT OF APPEALS
OF THE STATE OF VIRGINIA.

Appendix of Acts and Statutes passed by the General Assembly of Virginia and referred to in Brief of Argument of Plaintiff in Error.

(14,624.)

Allen, Lane & Scott, Prs., Phila.

APPENDIX OF ACTS AND STATUTES PASSED BY THE GENERAL ASSEMBLY OF VIRGINIA AND REFERRED TO IN THE BRIEF OF ARGUMENT OF PLAINTIFF IN ERROR.

"AN. ACT

"To incorporate the Lynchburg and Tennessee Railroad Company."
Passed March 24th, 1848.

"WHEREAS, the General Assembly of Virginia, *regards a railroad connection with its South-western territory of great importance; and believes that with the assent and co-operation of the State of Tennessee, an extension of the same to a point at or near the Town of Memphis, would establish a communication between the Atlantic Ocean and the Mississippi River, promotive of the great. purposes of the inter-national intercourse and of national defence:"*—

"1. *Be it enacted by the General Assembly*, That it shall be lawful to open books of subscription in The town of Lynchburg, under the direction of Henry Davis, John G. Meem, Samuel M'Corcle, Charles H. Lynch, Jesse Hare, and John R. M'Daniel; in Liberty, under the direction of Robert Allen, B. A. Donald, Charles W. Gill, Eben Nelms, Robert Campbell, Triplett E. Lowry, Gustavus A. Wingfield, Pascal Buford, William Terry, Joseph Wilson, William R. Jones, William Radford, Reaves S. Scruggs, Jessie T. Hopkins, Robert C. Mitchell, Henry W. Moseley, Pleasant Preston and M. P. Burks; in Salem, under the direction of William M. Peyton, William Watts, Elijah M'Clanahan, Powell ,H. Huff, George W. Shanks, John H. Griffin, Leroy Campbell, George C. Langhorne, and George P. Tayloe; in Christiansburg, under the direction of Jeremiah Kyle, David Barnett, William Wade, John B. Logan, John B. Radford, and R. A. Smith; in Newbern, under the direction of Benjamin F. Wysor, Lynch A. Currin, Edwin Watson, David F. Kent, Reason Vermillion, and J. B. Alexander; in Wytheville, under the direction of George Stewart, Ephraim M'Gavock, John P. Matthews, James St. Clair, Robert Crockett and Robert Kent; in Marion, under the direction of James W. Sheffey, George W. Jones, James F. Pendleton, Edward S. Watson, Francis P. Staly, John W. Schoolfield; in Abingdon, under the direction of John C. Greenway, John M. Preston, Isaac B. Dunn, John D. Mitchell, Jacob Lynch, and Daniel H. Trigg, or any two of them, and in such other place or places, under the direction of such agents or deputies as a majority of the commissioners at either of the above named places shall designate, for the purpose of receiving subscriptions to the amount of twenty-five thousand shares of $100.00 each, to constitute a joint capital stock for the purpose of making a railroad from the Town of Lynchburg by the most eligible route through the South-western part of Virginia to some suitable point on the Tennessee line, and for providing everything necessary for transportation on the same.

"2. *Be it further enacted*, That whenever twelve hundred shares of stock shall have been subscribed, the subscribers, their executors, administrators, and assigns, shall be and they are hereby declared to be a body politic and corporate under the name and style of 'The Lynchburg and Tennessee Railroad Company,' and shall be subject to all the provisions of the Act, '*prescribing certain general regulations for the incorporation of railroad companies, passed March 11th, 1837, and the amendments thereto.*'

"3. All machines, wagons, vehicles, or carriages belonging to the Company, together with all their works and all profits which shall accrue from the same, shall be vested in the respective shareholders forever, in proportion to their respective shares, and shall be deemed personal estate. *The tolls of said Company shall be regulated and prescribed by the President and Directors of said Company: Provided, however,* That if at any time hereafter the rates of toll and transportation shall enable the President and Directors, after payment of all necessary expenses, and after setting apart a fair and reasonable sum for the renewal and repairs of the road, ware-houses, depots, and other constructions, and of the machines, cars, and other vehicles of transportation, to divide more than fifteen per cent. on their capital stock invested, then the Legislature may regulate and reduce the tolls and transportation so as to enable the Company to divide fifteen per cent. and no more; and as soon as any ten miles of said road shall be completed, the President and Directors of the Company shall semi-annually declare and make such dividend of the net profits of their tolls, as they may deem advisable, to be divided among the proprietors of the stock in proportion to their respective shares.

"4. The said company shall proceed with all due diligence and reasonable dispatch in making the surveys and in the prosecution of said road, and shall, within three years from the passage of this Act, actually enter upon the construction of said road and have placed under contract not less than ten miles of the same, and complete and put in operation after the expiration of four years from the passage of this Act, not less than ten miles annually of the same under penalty of the forfeiture of any portion of said road which may not be under contract, or the construction thereof commenced, which forfeiture is declared to be absolute and complete from the time the conditions of this section shall fail to be complied with.

"5. The company shall commence the construction of said road at the town of Lynchburg and proceed with the same by regular continuous sections, except in such cases as the president and directors may, from the delay occasioned by the erection of bridges and difficult passes in any particular section direct otherwise, or in the event they shall determine that the interest of the company and the public may be advanced by it, they may commence simultaneously at the eastern and western terminus.

"6. *Be it further enacted,* That the common council of the town and corporation of Lynchburg be, and they are hereby authorized and empowered, by deed, bond, or otherwise, under the common seal of said corporation, to guarantee the payment of six per centum per annum interest, to her citizens and other stockholders in the said Lynchburg and Tennessee Railroad Company, in semi-annual dividends, upon an amount not exceeding $500,000.00.

"7. *Be it further enacted*, That the common council of said town and corporation shall have power to contract with the citizens, stockholders and others, whose stock they may have so guaranteed, at any time, when thereon required by the holder thereof, to take a transfer of the said stock, over and above thirty shares, and to issue their bonds or scrip therefor, bearing an interest of six per centum per annum, payable half yearly, as for lent money, redeemable in thirty years, and afterwards at the discretion of said common council; and to hypothecate the stock so transferred as security or otherwise: *Provided always*, That the liability of said town and corporation to the stockholders and railroad aforesaid, shall in no instance exceed half a million of dollars.

"8 *Be it further enacted*, That the said common council shall have power and authority to vote, in all the meetings of said company, upon the stocks guaranteed by them, not held by citizens or owners of real estate in the said town and corporation.

"9. *Be it further enacted*, That the said common council of the town and corporation of Lynchburg shall have power and authority to assess and collect taxes upon the lands, property, and person of all persons within the Town and the corporation for half a mile round, about, and beyond its present tax-paying limits for the foregoing purposes only;

"*Provided*, That the assessment so made shall be equal.

"10. This Act shall be in force from its passage."

Afterwards, on the sixth day of March, 1849, the General Assembly of Virginia, passed the following Act:—

"An Act

"Authorizing a subscription for the Commonwealth to the stock of the Virginia and Tennessee Railroad Company. Passed, March 6th, 1849.

"1. *Be it enacted by the General Assembly of Virginia*, That the name and style of the railroad company incorporated by an Act, entitled 'An Act to incorporate the Lynchburg and Tennessee Railroad Company,' passed the twenty-fourth day of March, 1848, be so changed that the name and style of said Company shall henceforth be 'The Virginia and Tennessee Railroad Company': *Provided*, That all subscriptions made to the stock of said Company, and all proceedings, actings, and doings whatsoever, in pursuance of any of the provisions of the above-recited Act, prior to the passage of this Act, shall in no way be impaired or affected by said change of name and style: And provided, *That all of the provisions of the said above-recited Act, not repealed by or inconsistent with the provisions of this Act, shall be and continue in full force and applicable to said Company with the change of name and style hereby made.*

"2. *Be it further enacted*, That whenever the Board of Public Works shall be satisfied that seven thousand five hundred shares have been subscribed for by persons solvent and fully able to pay, other than the State, to the capital stock of the said Virginia and Tennessee Railroad Company, the said Board is hereby authorized and required to subscribe on the part of the Commonwealth for nine thousand shares of the said capital stock, and as often thereafter as additional subscription shall be made to the stock of said Company, by persons solvent and fully able to pay, other than the State, the said Board is hereby authorized and required to subscribe further, on behalf of the Commonwealth, in like proportion to subscriptions by others than the State, until the whole amount of the capital stock shall be filled up.

"3. *Be it further enacted*, that the subscriptions for the Commonwealth shall be paid *pari passu* with the payment of individual subscriptions; *Provided*, That of the subscriptions made on behalf of the State under this Act, no more than $150,000 shall be paid within the fiscal year ending the thirtieth day of September, 1849; and no more than the additional sum of $300,000 shall be paid within the next fiscal year thereafter; and no more than the additional sum of $400,000 shall be paid within each successive fiscal year thereafter, till the whole amount of subscription for the State under this Act shall be paid.

"4. *Be it further enacted*, that for the purpose of paying the subscription on the part of the Commonwealth the Board of

Public Works is hereby authorized to borrow on the credit of the Commonwealth, from time to time, such sum or sums as may be necessary, agreeably to the Act of Assembly authorizing loans for the payment of certain subscriptions and appropriations, passed April 8th, 1839: *Provided*, the President and Directors of said Company shall, in no case, by sale, loan, hypothecation, or other device, dispose of the State subscription hereby authorized, at less than its par value.

" WHEREAS, *it is important to the interest of the South-western part of Virginia, and of the State and public generally, that the vast resources of that section of Virginia shall have free and unrestricted outlet, by the shortest and most direct routes, to any market whatsoever, therefore.*

" 5. *Be it further enacted*, That any railroad already constructed, or authorized to be constructed, or which may hereafter be authorized to be constructed, within the Commonwealth of Virginia, shall have the right and privilege to connect with the Virginia and Tennessee Railroad at either terminus, and at any other point thereof, and at any time whatsoever, at the discretion of the Company or owners of such connecting railroad or railroads."

" 6. The Virginia and Tennessee Railroad Company shall not subject any other railroad, connecting with their road, to any charge for such connection, nor to any transshipment, nor to any delay or detention of freight, tonnage, passengers, mail or other service performed; nor offer any obstacle whatsoever to the free passage upon and over the said Virginia and Tennessee Railroad, or upon and over any part or branch thereof, of any and all freight, tonnage and travel, or other thing whatsoever, passing from and to any such connecting road: *Provided*, That no railroad, so connecting shall be authorized to put upon the Virginia and Tennessee Railroad the motive power, passenger or mail cars, belonging to the road so connecting.

" 7. All tonnage, freight or passengers, coming from any road so connecting upon the Virginia and Tennessee Railroad, or passing from said last named road upon any connecting road, as well as any mail or other service to be performed by the

Virginia and Tennessee Railroad, in common with any connecting road, shall be carried, transported, and performed by the Virginia and Tennessee Railroad at the same rates of transportation per mile as shall have been established by the Virginia and Tennessee Railroad Company for transportation upon their road generally, without reference to such connecting roads; and the charges for carrying and transporting any such tonnage, freight, passengers, or mail, or for performing any other service upon any such connecting road shall be the same per mile as the charges for similar service on the Virginia and Tennessee Railroad; it being designed that there shall be a uniformity of charges on the Virginia and Tennessee Railroad and any road connecting therewith for all transportation, travel, or other service, common to both roads, and that no discrimination whatsoever shall be made upon one road, to the prejudice or the injury of another road, or to prevent the free and unrestricted transit, from one road to another road of all freight, tonnage, travel, mail, or other thing.

"8. To avoid the expense and delay of transshipment, the burden or freight cars of the Virginia and Tennessee Railroad, and of any railroad or railroads connecting therewith, shall be used in common by the Virginia and Tennessee Railroad and such connecting railroad or railroads, for transportation, upon such terms and under such regulations, as may be agreed on between the companies or owners of said railroads; *Provided*, That the burden of freight cars of any connecting railroad or railroads, to be so used in common, shall be of the same weight, model, size and cost, as near as may be, as those of the Virginia and Tennessee Railroad Company used for similar purposes.

"9. The number of such burden or freight cars to be provided and kept in good and complete repair and condition by any such connecting railroad, shall not be less than will bear the same proportion to the number of similar cars owned and used by the Virginia and Tennessee Railroad, as the length and tonnage or freight of any such connecting railroad shall bear to the length and tonnage or freight of the Virginia and

Tennessee Railroad, unless the Virginia and Tennessee Railroad Company and the company or owners of any such connecting railroad, shall consent to a different proportion or agree to some other arrangement.

" 10. *Be it further enacted*, That in any meetings of the stockholders of the Virginia and Tennessee Railroad Company, the proxy or proxies, appointed by the Board of Public Works to represent the subscription of the Commonwealth to the capital stock of the said Virginia and Tennessee Railroad Company, shall be authorized and empowered to give on behalf of the Commonwealth a number of votes equal to three-fifths of the whole number of votes allowed by law to the stockholders other than the State, who shall be represented personally or by proxy in such meeting of the stockholders.

" 11. *Be it further enacted*, That no person whatsoever shall at any meeting of the stockholders of the Virginia and Tennessee Railroad Company, represent by proxy or otherwise, a greater number of shares than double the number of shares of which he may be the *bona fide* owner.

" 12. *Be it further enacted*, That the said Virginia and Tennessee Railroad Company shall, at some one or more points near to or within the corporate limits of the town of Lynchburg, construct one or more depots upon the boundary line of the ground condemned to the use of the James River and Kanawha Canal, and shall deliver from the said depot or depots any freight or tonnage intended for transportation upon the said canal, and shall receive into the said depot or depots any merchandise or other freight coming upon the said canal and intended for transportation upon the said Virginia and Tennessee Railroad, and that no additional or extra charge shall be made by the said Virginia and Tennessee Railroad Company for such delivery out of, or receiving into, the depot or depots as aforesaid.

" 13. *Be it further enacted*, That for the purpose of providing the necessary depots and machinery for carrying on the transportation on said railroad, additional subscriptions, if necessary, shall be taken by the commissioners authorized to take subscriptions, to the amount of five hundred thousand dollars, of which amount the Commonwealth shall subscribe in the proportion hereby authorized for the subscription for the construction of the road, to be paid for in the manner provided for said subscription.

"14. This Act shall be in force from its passage."

ACTS OF ASSEMBLY OF VIRGINIA, 1852–3.

CHAPTER 57. An Act to amend the nineteenth section of chapter sixty-one of the Code, fixing the rate of toll on railroads.

Passed January 14, 1853.

1. *Be it enacted by the General Assembly*, That section nineteen of chapter sixty-one of the Code of Virginia be amended and re-enacted so as to read:

"SEC. 19. On a railroad on which different rates are not prescribed by law, the following rates of toll may be charged for transportation, to wit: Of a person and his baggage within a hundred and fifty pounds, not exceeding six cents per mile; of produce and other articles, except gypsum, lime, guano and other specific manures, not exceeding eight cents per ton per mile; and gypsum, lime, guano and other specific manures, not exceeding four cents per ton of twenty two hundred and forty pounds per mile; and for the transportation of any person or of any produce or other articles for a distance less than ten miles, a charge may be made at the foregoing rates as for ten miles. And where articles weigh less than four pounds to the cubic foot, a toll may nevertheles be charged on each cubic foot as for four pounds weight. And when the articles in any one consignment weigh less than one hundred pounds a toll may be charged on the same as for one hundred pounds weight. If for the transportation of any person with his baggage, or for any consignment, the whole charge at the rates before mentioned would be less than twenty-five cents, the same may nevertheless be charged as a minimum. For the weighing, storage and delivery of articles at any depot or warehouse of the company, a charge may also be made not exceeding the ordinary ware-house rates charged in the town in which or nearest to which the depot or warehouse is situated."

2. This Act shall be in force from its passage.

This Act appears in the Code of 1873 as section 18 of chapter 61 :—

"AN ACT

"To authorize the formation of the Atlantic, Mississippi and Ohio Railroad Company. Approved June 17th, 1870."

" 1. *Be it enacted by the General Assembly of Virginia*, That John Goode, Jr., and Thomas J. Corprew, of the city of Norfolk; George W. Bolling and J. A. Johnston, of the city of Petersburg; E. H. Murrell, of the county of Campbell; Thomas S. Bocock and Robert Early, of the city of Lynchburg; William Watts, of the county of Roanoke; James A. Walker, of the county of Pulaski; Robert Crockett, of the county of Wythe; Abram Fulkerson, of the county of Washington; Henry S. Kane, of the county of Scott; and Peter C. Johnston, of the county of Lee, be and they are hereby constituted a Board of Commissioners, a majority acting, to effect the organization of the Atlantic, Mississippi and Ohio Railroad Company, as provided by the terms of this Act.

" 2. That the said Atlantic, Mississippi and Ohio Railroad Company may have a capital stock of $25,000,000, such part to be made common, such part preferred, and such part an interest guaranteed stock, as the president and board of directors of the said company may prescribe—all, however, to be rated at $100 per share, par value.

" 3. That it shall be the duty of the Commissioners above named, acting directly or by their agent or agents, to arrange with the stockholders, other than the State, of the Norfolk and Petersburg, Southside, Virginia and Tennessee, and Virginia and Kentucky Railroad Companies, as to the relative value of their stocks, and to receive subscriptions to the capital stock of the said Atlantic, Mississippi and Ohio Railroad Company, to be paid in the stock of the said Norfolk and Petersburg, Southside, Virginia and Tennessee, and Virginia and Kentucky Railroads, at such rate or valuation as may have been agreed upon: *Provided*, That such valuation shall allow to each stockholder of the Norfolk and Petersburg, Southside, Virginia and Tennessee Railroad Companies, subscribing to the capital stock of the said Atlantic, Mississippi and Ohio Railroad Company, at least as many shares as such stockholder now holds in the aforesaid Companies; and for the purpose the more readily of arriving at such valuation it shall be lawful for the stockholders, other than the State, of the said Norfolk and Petersburg, Southside, Virginia and Tennessee, and Virginia and Kentucky Railroads, to hold a joint meeting at such time and place as the aforesaid Commissioners may designate; and it shall be competent for a majority of the stockholders assembled at such meeting, each Company acting separately, to agree upon such valuation; Provided, *That no stockholder in any one of the said Companies shall be required to subscribe to merge his stock in the capital stock of the said Atlantic, Mississippi and Ohio Railroad Company without his consent, or except on terms agreed to by said stockholder.*

"4. That whenever it shall appear to the satisfaction of such Commissioners that a majority of the stock, as to shares, held in the said Norfolk and Petersburg, Southside, Virginia and Tennessee, and Kentucky Railroads, or of that held in a majority of the said Companies, by others than the State, has been subscribed to the capital stock of the said Atlantic, Mississippi and Ohio Railroad Company, a general meeting of the stockholders, so subscribing to the capital stock of the Atlantic, Mississippi and Ohio Railroad Company, shall be held at such time and place, as may be designated by the said Commissioners; notice of the same to be given by publication in one or more newspapers published in the Cities of Norfolk, Petersburg, Richmond, and Lynchburg, and in the Town of Bristol-Goodson, unless it shall appear at the joint meeting provided to be held by the terms of the preceding section of this Act, that such amount of stock had been subscribed; in which event it shall be competent to proceed then and there to organize the said Atlantic, Mississippi and Ohio Railroad Company, as provided by the terms of this Act.

"5. That the stockholders of the said Atlantic, Mississippi and Ohio Railroad Company may, at the general meeting hereinbefore provided, a majority of the stock subscribed being so represented, proceed, under the supervision of the said Commissioners, to organize the said Atlantic, Mississippi and Ohio Railroad Company, and do such other things in furtherance of the objects of this Act as may be lawful to be done; and finally, upon the organization of the said Company so authorized, the functions of the said Commissioners shall determine, and the said Atlantic, Mississippi and Ohio Railroad Company shall be a body corporate and politic, vested with all the rights and privileges conferred by the Laws of the Commonwealth, and subject to such as apply to the railway corporations thereof generally.

"6. That in the primary organization of the said Atlantic, Mississippi and Ohio Railroad Company, as herein provided, and in all subsequent meetings of the same, each stockholder shall be entitled to cast, in person or by proxy, one vote for each share of stock held in the said company; and at such primary organization it shall be competent to elect such number of directors as the stockholders may see fit, and to determine the mode of electing a president and directors.

"7. That the said Atlantic, Mississippi and Ohio Railroad Company, at any time after its organization, *shall have authority should it so desire, to arrange with the Norfolk and Petersburg, Southside, Virginia and Tennessee, and Virginia and Kentucky Railroad Companies, or with any of the said Companies, by lease or otherwise, for the use of the franchise and property of the same, upon such terms as may be agreed upon by their stockholders acting in any general meeting.*

"8. That the said Atlantic, Mississippi and Ohio Railroad Company, acting by such agent or agents as may be appointed by its President and Board of Directors, *shall be entitled to represent in all meetings of the stockholders of the said Norfolk and Petersburg, Southside, Virginia and Tennessee, and Virginia and*

Kentucky Railroad Companies, so long as there shall remain any such distinctive organizations, from the failure of the majority of the stockholders thereof to subscribe or merge their stock in the capital stock of the said Atlantic, Mississippi and Ohio Railroad Company, as herein provided, all the stock of the said Companies which shall have been subscribed to the capital stock of the said Atlantic, Mississippi and Ohio Railroad Companies, casting the same number of votes for each stockholder who may have so subscribed to the capital stock of the said Atlantic, Mississippi and Ohio Railroad Company, as such stockholder would be entitled to have by law, if such subscriptions and transfer had not been made.

"9. That upon the formation of the said Atlantic, Mississippi and Ohio Railroad Company, as provided by the terms of this Act, the Board of Public Works shall be and they are hereby empowered and directed to sell and transfer, for the consideration hereinafter mentioned to the President and Board of Directors of the said Atlantic, Mississippi and Ohio Railroad Company, all the stock held by the Commonwealth in the said Norfolk and Petersburg, Southside, Virginia and Tennessee, and Virginia and Kentucky Railroads, to be cancelled or distributed among the stockholders of the Atlantic, Mississippi and Ohio Railroad Company, in the discretion of the stockholders of the said Company, as the stock of other stockholders than the State shall, as to each of the aforesaid Companies, become absorbed in that of the said Atlantic and Mississippi and Ohio Railroad Company; and the said company shall be authorized to appoint such number of directors in the said Norfolk and Petersburg, Southside, Virginia and Tennessee, and Virginia and Kentucky Railroad Companies, so long as there shall remain any such distinctive organizations, as the State now appoints; and upon all such stock so sold and transferred by the State, the said Atlantic, Mississippi and Ohio Railroad Company, by such agent or agents as its President and Board of Directors may appoint, shall be entitled to vote at all the meetings of the said Norfolk and Petersburg, Southside, Virginia and Tennessee, and Virginia and Kentucky Railroad Companies, which may be thereafter held, casting the same number of votes as the State of Virginia would be entitled to cast, by law, if such sale and transfer had not been made; and the Board of Public Works are further empowered and directed to sell and assign or convey unto the President and Board of Directors of the said Atlantic, Mississippi and Ohio Railroad Company all and whatever claims the State may hold or have against the said Norfolk and Petersburg, Southside, Virginia and Tennessee, and Virginia and Kentucky Railroad Companies, and in and with the said Atlantic and Mississippi Railroad Companies, every claim, right, and privilege shall as firmly vest, as to all such claims, as were vested in and with the Commonwealth on account of the same.

"10. That in consideration of the sales and transfers of claims and stock herein authorized and directed to be made, the Commonwealth of Virginia shall thereafter be absolved from all and whatever liability for and by reason of her unsatisfied subscriptions to the Virginia and Kentucky Railroad Company, which it is conditioned shall be completed within six years after the organization of the said Atlantic, Mississippi and Ohio Railroad Company; and in addition, the Commonwealth of Virginia shall be entitled to receive four millions of Virginia bonds, or, at the option of the said Company, of money, payable by annual installments of $500,000, each, the first payment to be made during the year 1885; such payment of the four millions of bonds as aforesaid, to be secured by a second mortgage upon the property of the said Atlantic, Mississippi and Ohio Railroad Company, to be duly executed to the Board of Public Works of the State, immediately upon the surrender of all of the aforesaid claims and stocks authorized to be sold. The said mortgage to be, in all respects, subordinate to such first mortgage or deed as the said Atlantic. Mississippi and Ohio Railroad Company may have made or may thereafter execute: *Provided*, The amount of such first mortgage or deed shall not exceed the sum of $15,000,000: *And provided further*, That a part of such sum equal to the amount of all existing liens upon the roads to be consolidated, shall be set aside for and employed in the discharge of the same, and the remainder employed in the construction of the road to Cumberland Gap, and the repairs and improvement of the whole line, so that at no time shall the obligations of the line, prior in dignity to such second mortgage to the State, exceed the said amount of fifteen millions of dollars: *And provided further*, That the said four millions of State bonds shall bear interest at six per cent. from the first day of July, eighteen hundred and eighty; the interest accruing thereon to be paid in lawful money of the United States, or, at the option of the Atlantic, Mississippi and Ohio Railroad Company, in State bonds, dollar for dollar: *And provided further*, That the said Atlantic, Mississippi and Ohio Railroad Company may, at their option, begin the annual payments, in liquidation of said four millions of State bonds, in the said year eighteen hundred and eighty; in which event the deferred payments shall carry interest from July first, eighteen hundred and eighty.

"11. That it shall be lawful for the said Atlantic, Mississippi and Ohio Railroad Company to take subscriptions for any unsubscribed portion of their capital stock, and to receive in payment, at such rate or valuation as may be agreed, lands, materials, city or railroad bonds and stocks; and it shall be lawful for the cities of Norfolk, Petersburg, and Lynchburg, and for the counties of Lee, Scott, and Wise, to subscribe to the capital stock of the said Atlantic, Mississippi and Ohio Railroad Company in such sums as may be authorized by the qualified voters of such cities and counties voting upon the same; and to this end it shall be the duty of the councils of such cities and the county courts of such counties, in their discretion, to cause a vote to be taken in the manner prescribed by law.

"12. That the said Atlantic, Mississippi and Ohio Railroad Company shall hold all lands acquired under this Act in fee simple, with the right to sell and convey the same.

"13. That it shall be lawful for the said Atlantic, Mississippi and Ohio Railroad Company to issue bonds, or other evidences of debt, at a rate of interest not exceeding the maximum prescribed by law, and to secure the payment of principal and interest by mortgage or otherwise; and it shall be lawful for the cities of Norfolk, Petersburg, and Lynchburg, and for the counties of Lee, Scott, and Wise, to guarantee such payment of any of the bonds or other evidences of debt so issued whenever the qualified voters of such constituencies shall, in the manner provided in the eleventh section of this Act, so authorize.

"14. That as the stock of the said Norfolk and Petersburg, Southside, Virginia and Tennessee, and Virginia and Kentucky Railroad Companies, respectively, shall be absorbed by the said Atlantic, Mississippi and Ohio Railroad Companies, as contemplated in the terms of this Act, *the said company shall become absolutely vested with all the rights of franchise and of property which belong to the same:* Provided, *That a separate account of the property, receipts, and expenses as to each of the aforesaid railroad companies, intended to be absorbed by the operation of this Act, shall be kept, in so far as to protect the claim and preserve the rights of stock and bondholders, and of such creditors and stockholders as to each of the said roads as may remain unsatisfied by the Atlantic, Mississippi and Ohio Railroad Companies.*

"15. That it shall be lawful for the said Atlantic, Mississippi and Ohio Railroad Company, upon such terms as shall be agreed upon, to consolidate with any railroad which may be constructed from Richmond to Lynchburg: *Provided*, That in the event of the failure of such consolidation, the said Atlantic, Mississippi and Ohio Railroad Company and such railroad from Richmond to Lynchburg shall mutually arrange for the interchange of passengers and freights, and, the gauge of the two roads permitting, of cars, so that passengers and freights passing from and to the line of such road from Lynchburg to Richmond, shall be subject to no manner of discrimination.

"16. That the said Atlantic, Mississippi and Ohio Railroad Company shall, as to freights and tonnage passing to or from the line of its railway, for or from Richmond and points on the line of the James River and Kanawha Canal, allow the same *pro rata* charges as by the Southside Railroad and by the other lines connecting with the said Atlantic, Mississippi and Ohio Railroad at Lynchburg: *Provided*, That in all computation of such rates with the canal, the same shall be made upon the basis or allowance of not less than seventy miles for the canal from Richmond to Lynchburg, and that the said canal shall not, by reason of this Act, be divested of any right or privilege to which it is now entitled by an Act passed March sixth, eighteen hundred and forty-nine, authorizing a subscription for the Commonwealth to the stock of the Virginia and Tennessee Railroad Company, or by any other law.

" 17. The said Atlantic, Mississippi and Ohio Railroad Company shall allow any connecting work all proper facilities in and for the formation of a physical junction with the railway tracks of the same, and for the interchange of freights and passengers; and the said Atlantic, Mississippi and Ohio Railroad Company shall make no higher rate of charge on passengers and freights coming from the line. of any such connecting work, and destined for any point on the line of the said Atlantic, Mississippi and Ohio Railroad, or upon passengers and freight coming from any point on the line of said road and destined for the line of any such connecting work, than is made by the said Atlantic, Mississippi and Ohio Railroad Company on the like class of passengers and freights for transportation over its own line for the same distance: *Provided*, Such connecting work shall observe the same rule in its charges for the transportation of such passengers and freights: *And provided further*, That if either company shall so arrange its freight cars as to run upon the tracks of the other, they shall be received and transported to any point of destination on the line of such other road upon just principles, as to the charges for moving, transporting and delivering such freight cars, as may be agreed on by said companies: *And provided further*, That the freight cars of such connecting road shall be of the same size, pattern, and plan as those of the said Atlantic, Mississippi and Ohio Road.

" 18. This Act shall be in force from its passage."

The Norfolk and Western Railroad Company became a corporation and the owner of all the works, property, and franchises of the said Atlantic, Mississippi and Ohio Railroad Company, in accordance with, and under the provisions of the following sections of chapter 61, of the Code of Virginia of 1873, and which are found on page 585 of said Code:—

"SECTION 44. If a sale be made under a deed of trust or mortgage executed by a company on all its works and property, and there be a conveyance pursuant thereto, such sale and conveyance shall pass to the purchaser at the sale, not only the works and property of the company as they were at the time of making the deed of trust or mortgage, but any works which the Company may, after that time and before the sale, have constructed, and all other property of which it may be possessed at the time of the sale, other than debts due to it. Upon such conveyance to the purchaser, the said Company shall, *ipso facto*, be dissolved. And the said purchaser shall forthwith be a corporation by any name which may be set forth in said conveyance, or in any writing signed by him and recorded in the Court in which the conveyanee shall be recorded."

"SECTION 45. The corporation created by or in consequence of such sale and conveyance, shall succeed to all such franchises, rights, and privileges, and perform all such duties as would have been had or should have been performed, by the first company but for such sale and conveyance; save only that the corporation so created shall not be entitled to the debts due to the first company, and shall not be liable for any debts of or claims against the said first company which may not be expressly assumed in the contract of purchase, and that the whole profits of the business done by such corporation shall belong to the said purchaser and his assigns. His interest in the corporation shall be personal estate, and he or his assigns may create so many shares of stock therein as he or they may think proper, not exceeding together the amount of stock in the first company at the time of the sale, and assign the same in a book to be kept for that purpose. The said shares shall thereupon be on the footing of shares in joint stock companies generally, except only that the first meeting of the stockholders shall be held on such day and at such place as shall be fixed by the said purchaser, of which notice shall be published for two weeks in a newspaper.

"SECTION 58. The charter of every company which is governed by the Act passed on the eleventh day of March, eighteen hundred and thirty-seven, prescribing certain general regulations for the incorporation of railroad companies, and of every company hereafter incorporated, which shall be governed by this chapter, may be altered or modified by any future legislature as may seem to it proper, except that no law shall be passed for taking from a company its works or property without making to it just compensation, or for changing its tolls without its assent, in any other cases than such as are specially provided for in this chapter.

"The general laws of the State of Virginia referred to in the declaration of the defendant in error as governing the rates of toll to be charged by railroad companies in Virginia, are found in chap. 61, Code of Virginia 1873, and are as follows:—

"SECTION 1. Every company which is governed by the Act passed on the seventh day of February, 1817, prescribing certain general regulations for the incorporation of turnpike companies, or by the Act passed on the eleventh day of March, 1837, prescribing certain general regulations for the incorporation of railroad companies, and every company which after the commencement of this Act, shall be incorporated to construct any work of internal improvement, shall be governed by the provisions contained in the fifty-seventh chapter and in this chapter, so far as they can apply to such company without violating its charter.

"SECTION 17. If the railroad company after payment or tender of the lawful tolls, fail to receive or to transport, or to deliver in a reasonable time any property so delivered or offered, or fail to take up or set down any passenger at such depot or other regular stopping place as he may desire, or if the said company shall demand and receive more than is lawful, it shall forfeit to the injured party a sum, to be recovered by motion or action, of not less than twenty-five or more than $100.

"SECTION 18. On a railroad on which different rates are not prescribed by Law, the following rates of toll may be charged for transportation; to wit:—of a person and his baggage within a hundred and fifty pounds, not exceeding Six Cents per mile; of produce and other articles, except gypsum, lime, guano and other specific manures, not exceeding Eight Cents per ton per mile; and gypsum, lime, guano and other specific manures, not exceeding Four Cents per ton of 2240 pounds per mile; and for the transportation of any person, or of any produce or other articles for a distance of less than ten miles, a charge may be made at the foregoing rates as for ten miles. And where articles weigh less than four pounds to the cubic foot a toll may, nevertheless, be charged on each cubic foot as for four pounds weight. And when the articles in any one consignment weigh less than one hundred pounds, a toll may be charged on the same as for one hundred pounds weight. If for the transportation of any person with his baggage, or for any consignment, the whole charge at the rates before mentioned would be less than twenty-five cents, the same may, nevertheless, be charged as a minimum. For the weighing, storage and delivery of articles at any depot or warehouse of the company, a charge may also be made not exceeding the ordinary warehouse rates charged in the town in which, or nearest to which the depot or warehouse is situated."

156–667

No. 153. October Term, 1894.

Supreme Court of the United States.

The Norfolk and Western Railroad Company,
Plaintiff in Error,

vs.

Edmund Pendleton.

IN ERROR TO THE SUPREME COURT OF APPEALS
OF THE STATE OF VIRGINIA.

SUPPLEMENTAL APPENDIX

TO THE

Brief of Argument of Plaintiff in Error: Act of Assembly
of Virginia, of March 11th, 1837.

(14,624.)

LAWS OF VIRGINIA, 1836-7.

CHAPTER 118.—An Act prescribing certain general regulations for the incorporation of railroad companies.

Passed March 11th, 1837.

1. *Be it enacted by the General Assembly,* That whenever it shall be deemed necessary by the General Assembly to grant a charter for the incorporation of a company to construct a railroad, the following general provisions shall be deemed and taken to be a part of the said charter or act of incorporation, to the same effect as if the same were expressly re-enacted in reference to any such charter or Act, except so far as such charter or Act may otherwise expressly provide.

2. The books for receiving subscriptions to the capital stock of the company shall be opened at such time and places as shall be authorized by the Act of incorporation, and under the direction of commissioners designated in said Act; thirty days' notice of the time and places of receiving subscriptions shall be advertised in some newspaper printed nearest the general route of the contemplated railroad, and in such other places as the commissioners may direct, and the books of subscriptions shall not be closed in less than ten days. If it shall appear that more than the whole capital stock has been subscribed for within the said ten days, it shall be the duty of the commissioners, at the place first named in the act of incoporation or a majority of them, to reduce the number of shares subscribed for amongst the subscribers, in fair and equal proportions to the amount of stock subscribed for respectively by each, until the subscriptions shall be equal to the capital stock of the company. But if the whole number of shares shall

not have been subscribed for within the said ten days, then the books may be continued open, or closed and reopened from time to time, with or without further notice, as a majority of the commissioners first named in the act of incoporation shall judge to be most expedient, until the whole number of shares shall have been subscribed for.

3. There shall be paid to the commissioners and deputy commissioners, at the time of subscribing, at least two dollars upon each share of $100, and in that proportion for shares of greater or less amount ; and the residue thereof shall be paid in such instalments and at such times as may be required by the president and directors of the company. The said commissioners and deputy commissioners shall forthwith, after the election of president and directors of the company, deliver to them their respective books of subscription, and pay over to them, or to their treasurer or other authorized agent, all moneys received by such commissioners and deputy commissioners ; and, on failure thereof the said president and directors may recover the amount due from such commissioners and deputy commissioners, or from any one or more of them, by motion, on ten days' previous notice, in the superior or inferior court of any county or corporation wherein such commissioner or commissioners, deputy commissioner or deputy commissioners, his or their executors or administrators, may reside. The clerk shall indorse upon the execution which shall issue upon such judgment that no security shall be taken, and the sheriff or other officer shall govern himself accordingly.

4. When the whole of the capital stock of the company or such portion thereof as the Act of incorporation shall authorize shall have been subscribed, the subscribers, their executors, administrators, and assigns shall be and are hereby declared to be incorporated into a company, with all the rights, privileges, and immunities, and subject to all the restrictions and liabilities of a body politic in law ; and by their corporate name shall be capable in law of purchasing, holding, selling,

leasing, and conveying estates, real, personal, and mixed, so far as shall be necessary for the purposes of their incorporation, and no further. They shall have perpetual succession and power to make and use a common seal; and by their corporate name may sue and be sued; and may make such by-laws, rules, and regulations, not inconsistent with the laws of this State or of the United States, as shall be necessary for well ordering and conducting the affairs of the company.

5. It shall be the duty of the commissioners at the place first named in the Act of incorporation, or a majority of them, to give public notice in the manner pointed out in the second section of this Act, of the sufficiency of the amount of subscription as aforesaid, and to call a general meeting of the subscribers at such convenient place and time as they shall name in said notice; which meeting shall be constituted as provided for in the eighteenth section of this Act.

6. The subscribers at their general meeting aforesaid, and the proprietors of the stock at every annual meeting thereafter, shall elect a president and five directors, who shall continue in office until the next annual meeting after their election, and until their successors shall be elected; but they, or any of them, may at any time be removed, and the vacancy or vacancies thereby created be filled by a majority of the votes given at any intervening general meeting. They shall also, at their first general meeting, and the annual general meetings aforesaid, elect a vice-president from amongst the directors thus chosen, who shall preside during the occasional or accidental absence of the president, and who, in the event of a vacancy in the office of president, caused by death, resignation, removal, or other disability, shall possess the power and authority of president, perform the same duties, and be subject to the same liabilities; but shall exercise his right of voting and the other rights of a director, on all questions before the board. The president shall preside, when present, at all meetings of the directors, and have the casting vote when they are equally divided. The president or vice-president

and three directors, or in the absence or disability of both president and vice-president, four directors (who shall appoint one of themselves president *pro tempore*), shall constitute a board for the transaction of business. In case of the death, resignation, or other disability of any of the directors, the vacancy may be filled by the board, or by the stockholders in general meeting.

7. The company are hereby invested with all the rights and powers necessary for the construction, repair, and maintaining of their railroad, to be constructed with as many sets of tracks as they may deem necessary; and also to make and construct all works whatsoever which may be necessary and expedient in order to the proper completion of such railroad. The president and directors shall be authorized, first, to defray, with any moneys which may be received by them, the expenses of stationery and advertising incurred, and of the preliminary surveys for the railroad, made prior to the organization of the company, should they deem the same reasonable and just; they shall have power to make contracts with any person or persons, on behalf of the company, for making the railroad, and performing all other works respecting the same which they shall judge necessary and proper. They shall also have power to receive subscriptions for the residue of any shares required to make up the capital stock of the company, or any increase thereof authorized by law; to require from the stockholders, from time to time, such advances of money on their respective shares as the wants of the company may demand, until the whole of their subscriptions shall be paid up; to call, on any emergency, a general meeting of the stockholders, giving one month's notice thereof in some newspaper printed at or nearest the place appointed for the general meetings of the company; to appoint a treasurer, clerk, and such other officers as they may require, to sign and settle all accounts, and to transact all the business of the company during the intervals between the meetings, agreeably to the provisions of this Act, and the by-laws and special directions of the stockholders.

8. If any stockholder shall fail to pay any requisition upon his stock, called for by the president and directors, within one month after the same shall have been advertised in the manner hereinbefore mentioned, it shall and may be lawful for the president and directors to sell at public auction, and to convey to the purchaser, on payment of the purchase money, the share or shares of such stockholder, giving one month's previous notice of the time and place of sale in manner aforesaid; and after retaining the sum due, with interest thereon, and all charges of the sale, out of the proceeds thereof, they shall pay the surplus over to the former owner or his legal representative; and if the said sale shall not produce the sum due on said share or shares, with the interest and incidental charges aforesaid, then the president and directors may recover the balance from the original proprietor or his assignee, or the executor or administrator of either of them, by motion, on ten days' notice, before any magistrate or court of the county, city, town, or borough in which he may reside, having jurisdiction thereof; or in case he shall have no fixed place of residence in the State, then before any magistrate or court of the county, city, town, or borough in which the principal office of the company may be; and any purchaser of stock under such sale shall be subject to the same rules and regulations as the original proprietor; or the said president and directors may, at their election, before a sale of the stock as aforesaid, proceed from time to time to recover from such stockholder the sum or sums so required to be paid upon his subscription, by motion, on ten days' notice, before the court of the county of which he is an inhabitant, or by warrant before a justice of the peace of such county having jurisdiction thereof.

9. Previously to the institution, and during the pendency of proceedings for ascertaining the damages to the proprietor for the condemnation of his land for the use of the company, the president and directors, their officers, agents, and servants, shall have full power and authority to enter upon all lands and tenements through which they may desire to conduct their railroad, and to lay out the same according to

their pleasure, so that no dwelling house, or space within sixty feet of one, belonging to any person be invaded without his consent, and if they think the interest of the company requires it, to take possession thereof for the purposes of the company; and also to enter upon, lay out, and take possession of such contiguous land as they may desire to occupy as sites for toll houses, warehouses, depots, engine sheds, stables, workshops, and other buildings for the necessary accommodation of their officers, agents, and servants, their horses, mules, and other cattle, and for the protection of the property committed to their care; *Provided*, That the land so laid out and occupied on the general line of the railroad shall not exceed, except in deep cuts and fillings, eighty feet in width; that the adjoining land for the sites of buildings shall not exceed one acre and a half in any one parcel. The president and directors shall describe by certain limits the land which they desire to occupy for any of the purposes aforesaid; and it shall be lawful for them to purchase the land so laid out, or any part thereof. If the president and directors cannot agree with the owner or owners of the lands so entered on and laid out, on the terms of purchase, it shall be lawful for them to apply to the court of the county in which such land or the greater part thereof may lie; or in case they fail, within twenty days after they shall have taken possession of said land, to make such application; or if, having made the same, they shall fail to prosecute the proceedings thus commenced diligently to a conclusion, it shall be lawful for the proprietor of the land to make similar application; and upon such application by either of the said parties, the court shall appoint five discreet, intelligent, disinterested, and impartial freeholders, to assess the damages to the owner, from the condemnation of his land for any of the purposes aforesaid. No such appointment, however, shall be made, unless ten days' previous notice of the application shall have been given to the said president and directors, or to any one of them, if the proceedings shall be instituted by the proprietor of the land, or if they shall be instituted by the president and directors, then like notice shall be given to the owner of the land, or to the guardian, if the owner be an infant, or to the committee, the owner being *non compos mentis*, if such owner, guardian, or committee can be found within the county; or, if he cannot be so found, then such appointment shall not be made, unless notice of the application shall have been published at least one month next preceding in some newspaper printed as convenient as may be to the court house of the county, and shall have been posted at the door of the court house on the first day at least of the next preceding term of said court. A day for the meeting of the said freeholders to perform the duty assigned them shall be designated in the order appointing them; and any one or more of them attending on that day may adjourn from time to time until their business shall be finished. Of the five freeholders so appointed, any three or more may act, after having been duly sworn or solemnly affirmed before some justice of the peace, that they will, impartially and justly, to the best of their ability, ascertain the damages which will be sustained by the proprietor of the land from the condemnation thereof for the use of the company, and that they will truly certify their proceedings thereupon to the court of the said county.

10. It shall be the duty of the said freeholders, in pursuance of the order appointing them, to assemble on the land proposed to be condemned, and after viewing the same and hearing such proper evidence as either party may offer, they shall ascertain, according to the best of their judgment, the damages which the proprietor of the land will sustain by the condemnation thereof for the use of the company. In performing this duty they shall consider the proprietor of the land as being the owner of the whole fee simple interest therein. They shall take into consideration the quantity and quality of the land to be condemned, the additional fencing which will be required thereby, and all other inconveniences which will result to the proprietor from the condemnation thereof, and shall combine therewith a just regard to the advantages which the owner of the land will derive from the construction of the railroad for the use of which his land is condemned: *Provided*,

That not less than the actual value of the land, without reference to the location and construction of the road, shall be given by the commissioners.

11. When the said freeholders shall have agreed upon the amount of damages they shall forthwith make a written report of their proceedings, under their hands and seals, in substance as followeth:—

"We, , freeholders, appointed by an order of the county court of , for the purpose of ascertaining the damages which would be sustained by , the proprietor of certain lands in the said county, which the president and directors of the company propose to condemn for their use, do hereby certify that we met together on the land aforesaid, on the day of , the day appointed therefor by the said order (or the day to which we were regularly adjourned from the day appointed for our meeting by the said order), and that having been first duly sworn, and having viewed the premises, we proceeded to estimate the quantity and quality of the land aforesaid, the quantity of additional fencing which would probably be occasioned by its condemnation, and all other inconveniences which seem to us likely to result therefrom to the proprietor of said land; that we combined with these considerations, as far as we could, a just regard to the advantages which would be derived by the proprietor of said land from the construction of the railroad for the use of which the said land is to be condemned; that under the influence of these considerations, we have estimated and do hereby assess the damages aforesaid at the sum of . Given under our hands and seals this day of ."

At the foot of the report so made, the magistrate, before whom the said freeholders were sworn or affirmed, shall make a certificate in substance as follows: " County, to wit: I, , a justice of the peace for said county, do hereby certify that the above-named freeholders, before they executed their duties as above certified, were solemnly sworn (or affirmed) before me, that they would impartially and justly, to the best of their ability, ascertain the damages which would be sustained by the above-named , from the condemnation of the above-mentioned land for the use of the company, and that they would certify truly their proceedings thereupon to the court of the said county. Given under my hand this day of ."

12. The report of the freeholders so made, together with the certificate of the magistrate as aforesaid, shall be forthwith returned by the said freeholders to the court of the county; and, unless good cause be shewn against the report, it shall be confirmed by the court and entered of record. But if the said report shall be disaffirmed, or if the said freeholders, being unable to agree, shall report their disagreement, or if from any other cause they should fail to make a report within a reasonable time after their appointment, the court may, at its discretion, as often as may be necessary, supersede them, or any of them, appoint others in their stead and direct another view and report to be made, in the manner above prescribed. In default of the payment or tender of the amount of damages so assessed, to the proprietor, or of the payment of the same into court, when, for good cause shown, the court shall have so ordered it, the court shall render judgment in favor of such proprietor for the amount of said damages, and double costs; and may thereupon either compel the company to pay the same into court, or award process of execution therefor, as to them may seem right. And when such judgment shall be satisfied by the payment of the money into court, or otherwise, the title of the land for which such damages were assessed shall be vested in the company in the same manner as if the proprietor had sold and conveyed it to them.

13. In the meantime, no order shall be made and no injunction shall be awarded by any court or judge to stay the proceedings of the company in the prosecution of their works,

unless it be manifest that they, their officers, agents, or servants, are transcending the authority given them by this Act, and that the interposition of the court is necessary to prevent injury that cannot be adequately compensated in damages.

14. The president and directors, for the purpose of constructing their railroad as aforesaid, and the works necessarily connected therewith, or of repairing the same, after they shall have been made; or of enlarging or otherwise altering the same, shall be at liberty by themselves, their officers, agents, and servants, at any time, to enter upon any convenient lands, and to cut, quarry, dig, take, and carry away therefrom, any wood, stone, gravel, or earth, which they may deem necessary; *Provided, however,* That they shall not, without the consent of the owner, cut down any fruit tree or any tree preserved in any field or lot for shade or ornament, or take any timber, gravel, stone, or earth, constituting any part of any fence or building. For all wood, stone, gravel, or earth, taken under authority of this Act, and for incidental injuries done to the inclosures, crops, woods, or grounds, in taking or carrying away the same, the president and directors shall make to the owner a fair and reasonable compensation, to be ascertained, if the parties cannot agree, by any three impartial, intelligent, and disinterested freeholders, who being appointed for that purpose by any justice of the peace thereto required by either of the parties, shall be sworn by him and shall then ascertain the compensation upon their own view of the grounds, and of the wood, stone, gravel, or earth which may have been taken therefrom, and the injury done as aforesaid in taking them: *Provided, however,* That it shall be the duty of the party making the application to show to the justice of the peace that ten days' previous notice of the time of making the same has been given to the other party or to some one of them; and no award which may be given under any appointment without such notice shall be obligatory or binding on the other party; and either party not satisfied with the award may appeal to the court of the county, which may, at its discretion, confirm the said

award and enter it of record, or, as often as they may deem it necessary, may supersede the said freeholders, or any of them, appoint others in their stead, and direct another view and award to be made in the manner aforesaid. If any justice of the peace or any freeholder shall fail to perform the duties assigned to them respectively as prescribed in this section, upon being thereto required by either party as aforesaid, such justice or freeholder shall forfeit and pay to the party making application a sum not exceeding twenty-five dollars, to be recovered, by motion, on ten days' notice before the court of the county of which he is an inhabitant; and shall, moreover, be liable to the action of the party aggrieved.

15. If the president and directors, on entering upon the land of any person under authority of this Act, shall by themselves or their officers, do any wanton or willful injury to such land or its appurtenances, or the crops, growing or gathered, or to any other property thereon, the company shall pay to the persons so injured double the amount of damages which shall be assessed by a jury in any proper action therefor, and if such injury be done by any person or persons who have contracted with the company for the construction of any of their works, or by any persons in their employment, such contractor or contractors shall be responsible to the injured party in the like amount; and in any action brought for the purpose the defendant may be held to bail upon affidavit before any judge or justice of the peace that there is good cause to believe that he will leave the Commonwealth before a final judgment can be obtained.

16. Whenever, in the construction of any railroad, it shall be necessary to cross or intersect any established road or way, it shall be the duty of the president and directors so to construct their railroad across such established road or way as not to impede the passage or transportation of persons or property along the same. And where it shall be necessary to pass through the land of any person, it shall be their duty

to provide for such person, and keep in proper repair proper wagon ways across their railroad from one part of his land to another: *Provided, however*, That in order to prevent the frequent crossing of established roads or ways, or any interference with the same by the railroad, it may be lawful for the president and directors to change the said established road or way at points where they may deem it expedient to do so; that for entering or taking any lands which may be necessary therefor, they shall be, and are hereby authorized to proceed under the provisions of this Act, as in the case of land necessary for their railroad: *And provided further*, That previous to making any such change the said company shall make and prepare a road equally good with the portion of the road proposed to be changed. But nothing herein contained shall be so construed as to require the company to keep in repair the portion of any road which they may have changed as aforesaid.

17. An annual meeting of the stockholders of the company shall be held at such time and place as the stockholders may from time to time appoint; to constitute which, or any general meeting called according to the provisions of this Act, the presence of proprietors entitled to a majority of all the votes which could be given by all the stockholders shall be necessary, either in person or by proxy properly authorized; and if a sufficient number do not attend on that day, or on any day appointed for a meeting called by the president and directors, those who do attend may adjourn from time to time until a meeting shall be had.

18. In counting all votes of the company each stockholder shall be allowed one vote for each share not exceeding ten shares, and one vote for every ten shares above ten by him held at the time in the stock of the company. No stockholder shall be allowed to vote at any election after the first, upon any stock which may have been assigned to him at any time within thirty days prior to the time appointed for such election.

19. The president and directors shall render distinct accounts of their proceedings and disbursements of money, to the annual meeting of the stockholders, and to the president and directors of the Board of Public Works.

20. The works of the company shall be executed with diligence, and if they be not commenced within two years after the passage of the Act of incorporation, and finished within the period which may be therein prescribed, and in case the company at any time after the said road is completed shall abandon the same, or cease to use and keep it in proper repair, so that it shall fail to afford the intended accommodation to the public for three successive years, then and in that case also their charter shall be annulled as to the company, and the State of Virginia may take possession of the said railroad and works, and the title thereto shall be vested in the said State so long as it shall maintain the same in the state and manner required by said charter; otherwise the lands over which the said road shall pass shall revert to and be vested in the person or persons from whom they were taken, by concession or inquisition, as aforesaid, or their heirs or assigns.

21. When payment for the stock of any subscriber or stockholder shall be fully made, the president and directors shall deliver one or more written or printed certificates of such stock, signed by the president and countersigned by the treasurer, under the seal of the company, to such subscriber or stockholder, for the number of shares belonging to him or her, which certificates shall be transferable in a book to be kept for that purpose by the company; and when transferred, shall be delivered up to the president and directors, and be canceled, and new certificates be issued to the transferee. All assignments of shares partially paid in shall be entered on the books of the company; but such assignment shall in nowise exempt the assignor or his representatives from their liability for the payment of all sums due, or which may become due, upon the stock assigned by him, if the assignee or his representatives shall be unable or shall fail to pay the same.

22. Upon the railroad the company shall have the exclusive right of transportation, and when a portion thereof shall be opened for transportation, they shall at all times furnish and keep in good repair the necessary machines, carriages, and other requisites for the safe and convenient transportation of persons and property. It shall be their duty at all times, upon the payment or tender of the lawful or customary tolls, to transport to any convenient place of delivery on the railroad which the owner of the goods may indicate, and there to deliver all articles which shall be delivered to them for transportation, or offered to them in proper condition to be transported, at some place on the road convenient for the reception thereof. They shall give no undue preference in transportation to the property of one person over that of another, but as far as practicable shall carry each in the order of time in which it shall be delivered or offered for transportation with the tolls paid or tendered. If the company or any of its officers or agents shall fail to receive, transport, or deliver in due time any property so offered or delivered to them, or shall fail to take up or set down any passenger or passengers at such convenient point as he or they may desire, upon the payment or tender of the passage money, or shall demand and receive more than the lawful tolls or rate of transportation, they shall forfeit and pay to the injured party not less than twenty-five nor more than $100, at the discretion of the court, to be recovered by motion in the county or corporation court or superior court of law for the county or corporation in which such preference has been given, or in which they have refused to comply with the requisitions of this section: *Provided*, Ten days' notice of such motion be given to the president of the company; and shall moreover be liable to an action on the case, in which full damages and double costs shall be recovered: *Provided*, The company shall not be required to put down or take in passengers, produce, or merchandise, except at their depots or other regular stopping places, and except when any railroad or stage line may intersect the same.

23. All machines, wagons, vehicles, or carriages belonging to any company incorporated subject to the provisions of this Act, together with all their works and all profits which shall accrue from the same, shall be vested in the respective shareholders forever, in proportion to their respective shares, and shall be deemed personal estate.

24. So soon as any portion of a railroad constructed according to the provisions of this Act may be in readiness for transportation, it shall be lawful for the president and directors of the company to transport, by their officers and agents, or by contractors under them, persons and property on the same, and to charge the following rates of toll : For the transportation of persons, not exceeding six cents per mile for each person, including his baggage, if any, not exceeding one hundred and fifty pounds ; for the transportation of goods, produce, merchandise, and other articles, except gypsum and lime, not exceeding eight cents per ton per mile ; for the transportation of gypsum and lime, not exceeding four cents per ton per mile, and for the transportation of the mail such sum as they may agree for : *Provided*, That upon packages or boxes consigned by and to one person, weighing in the aggregate less than one hundred pounds and of no greater dimensions each than two cubic feet, the president and directors may demand a toll not exceeding one cent per mile : *Provided, however*, That in time of war or insurrection, troops or persons in the military or naval service of this State or of the United States, with their arms, munitions, and baggage, shall be promptly transported and for one-half of the charge herein allowed, and shall be entitled to a preference over other persons or over goods, produce, merchandise, or other articles ; *And provided further*, That the president and directors shall be entitled to demand and receive for the wharfage, weighing, storage, and delivery of articles at their depots and warehouses, rates not exceeding the ordinary warehouse rates charged in the towns wherein or nearest to which their depots and warehouses are situated.

25. The said president and directors may make, or cause to be made, branches or lateral railroads in any direction whatsoever, in connection with their railroad, not exceeding ten miles each in length; and shall have, possess, and may exercise in the construction, use, and repair of the same, the same rights and powers, and shall be entitled, on the completion of any such branch or lateral railroad, to the same rights, privileges, and immunities, and be subject to the same pains, penalties, and obligations in relation to the same as are by law prescribed in relation to their principal line of railroad: *Provided*, That no branch or lateral railroad exceeding two miles in length shall be commenced until the expediency of making the same shall have been determined on at a general meeting of the stockholders, by two-thirds of all the votes which could legally be given in favor of the same; and that no such branch or lateral railroad shall be constructed until the main line shall be completed and in use.

26. So soon as any railroad to be constructed, subject to the provisions of this Act, shall be completed, the president and directors of the company shall semi-annually declare and make such dividends of the net profits from their tolls as they may deem advisable, to be divided among the proprietors of the stock in proportion to their respective shares. When the net profits shall amount to a sum equal to the capital stock expended as aforesaid, with six per centum per annum interest thereon, then the tolls which the president and directors shall be entitled to demand and receive on their railroad shall be fixed and regulated from time to time, by the Board of Public Works, or by such agent or agents as may be appointed by the legislature for that purpose, so as to make them sufficient, in their or his estimation, to yield a net profit equal to six per centum per annum on the capital stock expended in making and completing the railroad over and above what may be necessary for the repairs and renewal of the same. The president and directors shall in no case make any dividend exceeding the amount of the net profits actually received, so that the capital stock shall never thereby be impaired; and

if they shall make any dividend impairing the capital stock, the directors consenting thereto shall be liable, in their individual capacities, to the company for the amount of capital so divided; and each director present when such dividend is made shall be adjudged to be consenting thereto, unless he forthwith enter his protest in the minutes of the board, and give public notice to the stockholders of the declaring such dividend.

27. At the end of one year from the completion of the railroad, the president and directors shall report to the Board of Public Works a statement in such form as the said board shall require, showing the whole amount of the capital stock expended in the construction of the railroad, with the several heads of expenditure, the amount of tolls received during each preceding year, and the net loss or profit on the capital expended. And at the expiration of every period of three years after the said one year from the completion of the railroad, they shall return to the said board a similar statement, in like form, showing the amount and kinds of expenditures and receipts, and the net profits of each year of such period. And for each failure to make the said returns, the company shall be liable to a penalty of $1000, recoverable on ten days' notice in any court having jurisdiction.

28. It shall be the duty of the president and directors of the company to publish a notice of every dividend declared by them, and of the time and place appointed for the payment thereof, in some newspaper printed in the city of Richmond, and in one or more of those printed in or nearest to the town or place in which the principal office of the company may be situated.

29. The company shall not borrow money for any purpose whatever, without special authority of law, until the whole amount of capital stock subscribed shall be paid up and expended or appropriated, losses by delinquent or insolvent stockholders excepted: *Provided, however,* That if any part

of the capital stock shall be unsubscribed, and it shall be necessary to obtain the amount thereof for the completion of the work, they shall have power to borrow the whole or any part of such unsubscribed capital as they may deem necessary, and may make the same convertible into stock of the company at the option of the lender, at any time within one month after the declaration of any semi-annual or other dividend of the profits.

30. The full right and privilege is hereby reserved to the legislature of connecting with any railroad which may be constructed, agreeably to the provisions of this Act, any other railroad or railroads leading from either termination of or diverging from the main route of the same, or of any branch thereof, to any other part or parts of the State.

31. The right shall be and is hereby reserved to the State to subscribe for two-fifths of the stock of any company, subject to the provisions of this Act, such right to be exercised within twelve months after the first general meeting of the stockholders, under and by virtue of an Act of the General Assembly; and, in case the capital of the company shall be subsequently increased, then such right shall be exercised before the closing of the books opened to receive the additional subscriptions.

32. The company shall not employ its capital or be engaged in any transactions or business but such as may be necessary to the construction of their railroad and works and their management and preservation; nor shall they subscribe to the stock of any other incorporated company, except for the temporary investment of surplus funds.

33. If any person or persons shall willfully and maliciously remove or disturb any of the company's constructions, or place designedly and with evil intent any obstruction on the line of their railroad, so as to jeopardize the safety or endanger the lives of persons traveling or employed on the same, such

person or persons so offending shall be deemed to be guilty of a high crime and misdemeanor, and if such person or persons be free, he, she, or they shall be adjudged, on conviction, to be imprisoned in the common jail or penitentiary house for a term not less than two nor more than five years, and if such person or persons be a slave or slaves, he, she, or they shall suffer death without benefit of clergy.

34. If any person or persons shall willfully destroy or otherwise injure any railroad, or any buildings, engines, cars, or other property whatever connected therewith or belonging thereto, tending to obstruct or interrupt the operations of the company, but without endangering the safety of passengers or others, he, she, or they shall forfeit and pay to the company three times the actual damage so sustained, to be sued for and recovered, with full costs, in any court having cognizance thereof by action of debt in the name and for the use of the company, and shall, moreover, be punishable as for a misdemeanor.

35. Any part of any charter or Act of incorporation granted agreeably to the provisions of this Act shall be subject to be altered, amended, or modified by any future legislature as to them shall seem proper, except so much thereof as prescribes the rate of compensation or tolls for transportation: *Provided*, That the rights of property acquired under this Act, or any other Act adopting the provisions of this Act, shall not be taken away or impaired by any future Act of the legislature.

36. *Be it further enacted*, That it shall be competent to the General Assembly to provide by law for the transportation of the United States mail over any railroad, for a fair and adequate compensation, and to provide the means of ascertaining such compensation.

37. This Act shall be in force from its passage.

153-359

Office Supreme Court, U. S.
JAN [illegible]
JAMES H. McKENNEY,

No. 153. October Term, 1894.

No. 359. October Term, 1894.

Supreme Court of the United States.

The Norfolk and Western Railroad Company,
Plaintiff in Error,

vs.

Edmund Pendleton.

[TWO CASES.]

IN ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF VIRGINIA.

BRIEF FOR PLAINTIFF IN ERROR.

WM. J. ROBERTSON,
W. H. BOLLING,
JOS. I. DORAN,
Of Counsel.

Allen, Lane & Scott Prs., Phila.

(14,624.)

SUPREME COURT OF THE UNITED STATES.

Norfolk and Western Railroad Company, Plaintiff in Error,

vs.

Edmund Pendleton.

(Two cases.)

October Term, 1894.
No. 153 and
No. 359.
October Term, 1894.

IN ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF VIRGINIA.

Supplemental Brief for the Plaintiff in Error.

As stated in the original brief for the plaintiff in error, the second and third sections of the Act of March 24th, 1848, incorporating the Lynchburg and Tennessee Railroad Company are as follows (see appendix to plaintiff in error's brief, pages 2 and 3):—

> "2. *Be it further enacted,* That whenever twelve hundred shares of stock shall have been subscribed, the subscribers, their executors, administrators, and assigns, shall be and they are hereby declared to be a body politic and corporate under the name and style of 'The Lynchburg and Tennessee Railroad Company,' and shall be subject to all the provisions of the Act, '*prescribing certain general regulations for the incorporation of railroad companies, passed March 11th, 1837, and the amendments thereto.*'
>
> "3. All machines, wagons, vehicles, or carriages belonging to the Company, together with all their works and all profits which shall accrue from the same, shall be vested in the respective shareholders forever, in proportion to their respective shares, and shall be deemed personal

estate. *The tolls of said Company shall be regulated and prescribed by the President and Directors of said Company:* Provided, however, *That if at any time hereafter the rates of toll and transportation shall enable the President and Directors, after payment of all necessary expenses, and after setting apart a fair and reasonable sum for the renewal and repairs of the road, warehouses, depots, and other constructions, and of the machines, cars, and other vehicles of transportation, to divide more than fifteen per cent. on their capital stock invested, then the Legislature may regulate and reduce the tolls and transportation so as to enable the Company to divide fifteen per cent. and no more:* and as soon as any ten miles of said road shall be completed, the President and Directors of the Company shall semi-annually declare and make such dividend of the net profits of their tolls, as they may deem advisable, to be divided among the proprietors of the stock in proportion to their respective shares."

The twenty-fourth and thirty-fifth sections of the General Railway Act of 1837 (Acts of 1837, page 100), are as follows (see supplemental appendix to plaintiff in error's brief, pages 15 and 19):—

"24. So soon as any portion of a railroad constructed according to the provisions of this Act may be in readiness for transportation, it shall be lawful for the president and directors of the company to transport, by their officers and agents, or by contractors under them, persons and property on the same, and to charge the following rates of toll: For the transportation of persons, not exceeding six cents per mile for each person, including his baggage, if any, not exceeding one hundred and fifty pounds; for the transportation of goods, produce, merchandise, and other articles, except gypsum and lime, not exceeding eight cents per ton per mile; for the transportation of gypsum and lime, not exceeding four cents per ton per mile, and for the transportation of the mail such sum as they may agree for: *Provided,* That upon packages or boxes consigned by and to one person, weighing in the aggregate less than one hundred pounds and of no greater dimensions each than two cubic feet, the president and directors may demand a toll not exceeding one cent per mile: *Provided, however,* That in time of war or insurrection, troops or persons in the military or naval service of this State or of the United States, with their arms, munitions, and baggage, shall be promptly transported and for one-half of the charge herein allowed, and shall be entitled to a preference over other persons or over goods, produce, merchandise, or other articles; *And provided further,* That the president and directors shall be entitled to demand and receive for the wharfage, weighing, storage, and delivery of articles at their depots and warehouses, rates not exceeding the ordinary warehouse rates charged in the towns wherein or nearest to which their depots and warehouses are situated."

"SECTION 35. Any part of any charter or Act of incorporation granted agreeably to the provisions of this Act, shall be subject to be altered, amended, or modified by any future Legislature, as to them shall seem proper; *except so much thereof as prescribes the rate of compensation or tolls for transportation: Provided,* That the rights of property acquired under this Act, or any other adopting the provisions of this Act, shall not be taken away or impaired by any future Act of the legislature."

* * * * * * * * *

It will therefore be noticed that the twenty-fourth section of the Act of 11th March, 1837, fixes as definitely as did the subsequent Act of 14th January, 1853, the rates of toll which it should be lawful for the president and directors of a railroad, constructed according to the provisions of the Act, to charge. The rates of toll which the president and directors of the Lynchburg and Tennessee Railroad Company were, by the third section of its charter, authorized to fix, might, and doubtless did, differ as materially from the rates fixed by the twenty-fourth section as have any of the subsequent rates differed from those fixed by the Act of 14th January, 1853; and no reason has been or can be assigned why this last-mentioned Act should have the effect of repealing the provision authorizing the president and directors to fix the tolls that would not have applied equally to the twenty-fourth section of the Act of 11th March, 1837. It cannot be supposed that the legislature designed the charter of the Lynchburg and Tennessee Railroad Company to be *felo de se*, as it certainly would be if it were so construed.

The legislation under which the questions in this case arise is so peculiar to the case itself, and the intent is so plainly evident to maintain and continue the separate franchises of the Virginia and Tennessee Railroad Company, that the court will find nothing in any of the adjudicated cases, either in this court or elsewhere, which on careful examination and analysis is adverse to the contention of the plaintiff in error.

WM. J. ROBERTSON,
W. H. BOLLING,
JOS. I. DORAN,
Of Counsel.

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Office Supreme Court, U. S.
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CLERK.

In the Supreme Court of the United States.

THE NORFOLK AND WESTERN RAILROAD CO.
vs. } Brief of Counsel for Defendant in Error.
EDMUND PENDLETON.

To the honorable judges of the supreme court of the United States:

There is no error in the judgment of the supreme court of Virginia, complained of.

FIRST.—Because the error assigned comes within the police power of the State.

Cooley on Const. Lim., 6 Ed., 709.

SECOND.—The corporate identity and existence of the Lynchburg and Tennessee Railroad Co. had ceased and determined by merger, first in the Virginia and Tennessee Railroad Company, then in the Atlantic, Mississippi and Ohio Railroad Company, and, lastly, in the plaintiff in error.

The Atlantic, Mississippi and Ohio Railroad Company was chartered by Act of the General Assembly of Virginia, approved June 17, 1870. Acts 1869–70, page 181, chapter 143. By the 5th section of said Act it was provided that said company should be subject to all the laws of the Commonwealth, which apply to the railway corporations thereof generally. The Act of 1852–3, under which judgment was obtained, was such law, in force at the time of incorporation of the Atlantic, Mississippi and Ohio Railroad Co. Acts 1852–3., Chap. 57, page 62, passed January 14th, 1853; Railroad Commission Cases, 116 U. S., 307, 6 Sup. Court Report, 334, 348, 349, 388, 391, 1191; Railroad Co. *vs.* Maryland, 21 Wal. 456; Chicago, etc., Railroad Co., *vs.* Iowa, 94 U. S., 155; Ruggles *vs.* Illinois, 108 U. S., 526, 2 Sup. Ct. Rep. 832.

Respectfully submitted,

JNO. J. A. POWELL,
For defendant in error.

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Office Supreme Court, U. S.
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JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1894.

No. 153.

THE NORFOLK AND WESTERN RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

EDMUND PENDLETON.

IN ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF VIRGINIA.

BRIEF FOR DEFENDANT IN ERROR.

JNO. J. A. POWELL,
Counsel for Defendant in Error.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States.

THE NORFOLK AND WESTERN RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

EDMUND PENDLETON.

IN ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF VIRGINIA.

I.

BRIEF FOR DEFENDANT IN ERROR.

There is no error in the judgment of the supreme court of appeals of Virginia complained of. Said judgment does not impair the obligation of the contract between the State and the Lynchburg and Tennessee Railroad Company, as assigned in the specification of errors on page 7 of brief for plaintiff in error. , The corporate identity and existence of the Lynchburg and Tennessee railroad had ceased, determined, and *been dissolved* by merger into the Virginia and Tennessee Railroad Company by the consolidation of that company with the Norfolk and Petersburg, the Southside, and the Virginia and Kentucky Railroad Company into the Atlantic, Mississippi and Ohio Railroad Company, and by the sale of the latter company's property and the regular conveyance of the same to the plaintiff in error.

II.

BRIEF OF ARGUMENT.

Accepting the gage of battle tendered by the counsel for the plaintiff in error, as announced in their brief, on page 9, the main questions to be considered are:

> "1st. Does the act of the legislature of Virginia, approved June 17, 1870, 'To authorize the formation of the Atlantic, Mississippi and Ohio Railroad Company' confer upon that company the franchise to regulate by its president and board of directors the tolls of the company which was given to the Virginia and Tennessee Railroad Company by the act of March 24, 1848, as prescribed in the third section of the last-named act?"
>
> "2d. Do the provisions of the act of January 14, 1853, found in the Code of 1873, chapter 61, section 18, prescribing general regulations for the government of railroads upon which other rates are not prescribed by law, apply to the Atlantic, Mississippi and Ohio Railroad Co. or to the plaintiff in error, its successor? If so, is not this law, so far as it affects the plaintiff in error, unconstitutional and void, as obnoxious to that clause of the Constitution that prohibits the State from passing any law to impair the obligation of a contract?"

To answer these questions further questions are involved:

(*a*.) Did the act of the General Assembly of Virginia create a new corporation with new and distinct powers, rights, and privileges?

(*b*.) Did the Atlantic, Mississippi and Ohio Railroad Company go into operation and continue its existence under the charters of the Norfolk and Petersburg, the Southside, the Virginia and Tennessee, and the Virginia and Kentucky Railroad

Companies; and, if not, what effect had the act of 1870 upon the charters of these several companies?

In considering these involved questions we are greatly aided by the opinion of Mr. Justice Strong in the case of Cent. R. R. and Banking Company *vs.* State of Georgia, 92 U. S., ~~[illegible]~~ 665, and especially refer to it.

(*a*) Was a new corporation created by the act of 1870 referred to?

The 15th section of article V of the constitution of Virginia is as follows: "No law shall embrace more than one object, which shall be expressed in its title; nor shall any law be revived or amended with reference to its title, but the act revived or the section amended shall be re-enacted and published at length." The title of the act of 1870 is in these words: "An act to authorize the formation of the Atlantic, Mississippi and Ohio Railroad Company."

The object then of the act was to form or create a railroad company. Nothing further is intimated—no mention is made of the union or consolidation of existing companies, to amend, alter, or otherwise enlarge or contract their powers.

Constitutionally, then, the legislature meant nothing further than the formation of a new company and its endowment with corporate rights and privileges, and in the terms of the act we find nothing else. The 1st section appoints a board of commissioners, charged with the duty of effecting the organization of the new company in the manner provided by the terms of the act. Section 2nd provides for its capital stock and its division into common, preferred, and interest-guaranteed stock. This division, it is to be observed, was not authorized by the charters of the Norfolk and Petersburg, Southside, Virginia and Tennessee, or the Virginia and Kentucky Railroad Companies. The third section authorized the commissioners to receive subscription to the stock of the new company and to this end treat with the stockholders of the Norfolk and Petersburg, Southside, Virginia and Tennessee, and Virginia and Kentucky Railroad Companies as to the value of the stock of the several companies and to receive the same at this agreed valuation in payment of subscription to the capital stock of the Atlantic, Mississippi and Ohio Railroad Company. The fourth section provided that whenever it should appear to the satisfaction of the commissioners that a majority of the stock as to shares held in the Norfolk and Petersburg, Southside, Virginia and Tennessee, and Virginia and Kentucky Railroad Companies *or that held in a majority of the said companies* by others than the State *had been subscribed to the capital stock of the Atlantic, Mississippi and Ohio Railroad Company*, then notice of such fact should be given for the purpose of organization; and, this being done, the fifth section provided for the organization of the Atlantic, Mississippi and Ohio Railroad Company and breathed into it the life of a body corporate and politic, vested it with all the rights and privileges conferred by the laws of the Commonwealth, and subjected it to such laws of the Commonwealth as applied to the railway corporations thereof generally, namely—as we contend and the supreme court of Virginia decided—the act of January 14, 1853, found in the Code of 1873, chapter 61, section 18.

The Atlantic, Mississippi and Ohio Railroad Company was a corporation created by the act of June, 1870, with rights and privileges given by said act and made subject to the general railway laws. (*b*.) Proceeding then with the second inquiry, how were the charters of the Norfolk and Petersburg, Southside, Virginia and Tennessee, and Virginia and Kentucky Railroad Companies affected by this new organization? Were their continued existence essential to its existence? Do they or any of them now exist? We contend that they do not exist, and that none of them survived the organization of the Atlantic, Mississippi and Ohio Railroad Company. Certainly they were not essential to the existence of this said company. The organization did not necessarily dissolve the corporate existence of all these companies. The dissolution of no one of the said companies occurred until a majority of its stockholders other than the State subscribed or merged their stock in the capital stock of the Atlantic, Mississippi and Ohio Railroad Company, but whenever to the capital stock of the Atlantic, Mississippi and Ohio Railroad Company there was subscribed, as provided by the fourth section of its charter, *a majority of the stock* as to shares held in these several companies, or that held in a majority of them, then that particular company or companies left with a minority of stockholders became defunct, dissolved, without distinctive organization, and this by the very terms of the act of 1870. (See the eighth section of said act.)

That it might have been that a majority of the stockholders other than the State, of the Norfolk and Petersburg, the Southside, and the Virginia and Kentucky Railroad Companies were willing to subscribe to the stock of the new company and the shareholders of the Virginia and Tennessee Company unwilling so to do. What then? Why, simply the organization of the Atlantic, Mississippi and Ohio Railroad Company was effected. The Norfolk and Petersbug, Southside, and the Virginia and Kentucky Railroad Companies lost their distinctive organizations. The Virginia and Tennessee Company continued its corporate existence, and under the seventh section of the act the Atlantic, Mississippi and Ohio Railroad Company arranged with the Virginia and Tennessee Company, by lease or otherwise, for the use of its franchise and property. So after organization of the Atlantic, Mississippi and Ohio Railroad Company each of the other companies lost their distinctive organizations as soon as a majority of its stockholders subscribed their stock to the new company, and this new company was granted further and larger privileges; its capital stock was increased manifold; new stock certificates were issued; it became the owner of the State stock in the several roads by purchase, which could be canceled or new stock issued and distributed for the benefit of the stockholders of the new company. Now, did a majority of the stockholders of the Virginia and Tennessee Railroad Company subscribe to the stock of the new and surrender their old stock for cancellation? Unquestionably this was the case, for otherwise the Atlantic, Mississippi and Ohio road could not have mortgaged the road-bed of the Virginia and Tennessee road and the Norfolk and Western Railroad Company (plaintiff in error) could not have become the owners thereof by purchase. It is not pretended there was a lease thereof or any other arrangement with respect thereto made under the seventh section of the act. The Norfolk and Western Railroad Company claims ownership solely by purchase under a trust deed executed by the Atlantic, Mississippi and Ohio Railroad Company. Test the case by the principles laid down in the Cent. R. R. & B. Co. *vs.* the State of Georgia.

Was a new company created? There was. Does this new company exist under the charters of the Norfolk and Petersburg, Southside, Virginia and Tennessee, and Virginia and Kentucky Railroad Companies or under its own charter? Unquestionably under its own charter granted in 1870. Are these several old charters now in existence? No; but destroyed by the terms of the new charter upon the happening of certain things which have been done in each case. Is it manifest that the intention of the legislature was to dissolve these old charters in the manner prescribed? It is. Then, the new charter was accepted subject to the laws in force prescribed by the act of 1852-'53.

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What were the rights of the stockholders in these several companies under the act of 1870? In Tyson *vs.* Mahone, 1st Hughes' C. C. R., which construes this same act, on page 87, Judge Rives defines them thus: "The minority, not surrendering their stock, has the common-law right of redress for damages sustained to demand and have a fair and just account of these corporate assets and full satisfaction for their stock," and on page 89 he says the majority have rights equally clear and indisputable, and, among them, *the right to forsake and abandon their separate charters and betake themselves to a common one* more to their liking; but conceding for the moment that the organization of the Atlantic, Mississippi and Ohio Railroad Company, as stated above, did not work a dissolution and extinguishment of the said several companies, the plaintiff in error owes its corporate identity and legal existence to the general law of the State providing for the purchase of corporate property, as set forth in appendix to the brief of the plaintiff in error on page 18. Section 44 of the very act under which the plaintiff in error has its being and existence in direct terms says: "*Upon such conveyance to the purchaser the said company* (*i. e.*, the company whose property is sold) *shall ipso facto be dissolved.*"

It is therefore submitted that the plaintiff in error must claim its paternity from the act referred to; that by such act the Atlantic, Mississippi and Ohio Railroad Company, when its property was sold and conveyed to the plaintiff in error, became dissolved; that by its dissolution the Lynchburg and Tennessee, the Southside, the Norfolk and Petersburg, and the Virginia and Kentucky Railroad Companies were also dissolved, and there could be no such thing as a meeting or action by the president and directors of the Lynchburg and Tennessee railroad or either of the other consolidated companies.

As to the power and right of the State to enact the law of 1852–'53 fixing a maximum rate of tolls, we refer to the case of Ruggles *vs.* People of State of Illinois, 108 U. S., 812, and cases there cited; Railroad Commission Cases, 116 U. S., 307; Railroad Co. *vs.* Maryland, 21 Wall., 456; Chicago, &c., R. R. Co. *vs.* Iowa, 94 U. S., 155.

JNO. J. A. POWELL,
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Supreme Court of the United States.

OCTOBER TERM, 1894.

No. 359.

THE NORFOLK AND WESTERN RAILROAD COMPANY, Plaintiff in Error,

vs.

EDMUND PENDLETON.

IN ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF VIRGINIA.

BRIEF FOR DEFENDANT IN ERROR.

Jno. J. A. Powell,
Counsel for Defendant in Error.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

IN THE

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THE NORFOLK AND WESTERN RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

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IN ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF VIRGINIA.

I.

BRIEF FOR DEFENDANT IN ERROR.

There is no error in the judgment of the supreme court of appeals of Virginia complained of. Said judgment does not impair the obligation of the contract between the State and the Lynchburg and Tennessee Railroad Company, as assigned in the specification of errors on page 7 of brief for plaintiff in error. The corporate identity and existence of the Lynchburg and Tennessee railroad had ceased, determined, and *been dissolved* by merger into the Virginia and Tennessee Railroad Company by the consolidation of that company with the Norfolk and Petersburg, the Southside, and the Virginia and Kentucky Railroad Company into the Atlantic, Mississippi and Ohio Railroad Company, and by the sale of the latter company's property and the regular conveyance of the same to the plaintiff in error.

II.

BRIEF OF ARGUMENT.

Accepting the gage of battle tendered by the counsel for the plaintiff in error, as announced in their brief, on page 9, the main questions to be considered are:

> "1st. Does the act of the legislature of Virginia, approved June 17, 1870, 'To authorize the formation of the Atlantic, Mississippi and Ohio Railroad Company' confer upon that company the franchise to regulate by its president and board of directors the tolls of the company which was given to the Virginia and Tennessee Railroad Company by the act of March 24, 1848, as prescribed in the third section of the last-named act?"
>
> "2d. Do the provisions of the act of January 14, 1853, found in the Code of 1873, chapter 61, section 18, prescribing general regulations for the government of railroads upon which other rates are not prescribed by law, apply to the Atlantic, Mississippi and Ohio Railroad Co. or to the plaintiff in error, its successor? If so, is not this law, so far as it affects the plaintiff in error, unconstitutional and void, as obnoxious to that clause of the Constitution that prohibits the State from passing any law to impair the obligation of a contract?"

To answer these questions further questions are involved:

(*a*.) Did the act of the General Assembly of Virginia create a new corporation with new and distinct powers, rights, and privileges?

(*b*.) Did the Atlantic, Mississippi and Ohio Railroad Company go into operation and continue its existence under the charters of the Norfolk and Petersburg, the Southside, the Virginia and Tennessee, and the Virginia and Kentucky Railroad

Companies; and, if not, what effect had the act of 1870 upon the charters of these several companies?

In considering these involved questions we are greatly aided by the opinion of Mr. Justice Strong in the case of Cent. R. R. and Banking Company *vs.* State of Georgia, 92 U. S., ~~757,~~ 665 and especially refer to it.

(*a*) Was a new corporation created by the act of 1870 referred to?

The 15th section of article V of the constitution of Virginia is as follows: "No law shall embrace more than one object, which shall be expressed in its title; nor shall any law be revived or amended with reference to its title, but the act revived or the section amended shall be re-enacted and published at length." The title of the act of 1870 is in these words: "An act to authorize the formation of the Atlantic, Mississippi and Ohio Railroad Company."

The object then of the act was to form or create a railroad company. Nothing further is intimated—no mention is made of the union or consolidation of existing companies, to amend, alter, or otherwise enlarge or contract their powers.

Constitutionally, then, the legislature meant nothing further than the formation of a new company and its endowment with corporate rights and privileges, and in the terms of the act we find nothing else. The 1st section appoints a board of commissioners, charged with the duty of effecting the organization of the new company in the manner provided by the terms of the act. Section 2nd provides for its capital stock and its division into common, preferred, and interest-guaranteed stock. This division, it is to be observed, was not authorized by the charters of the Norfolk and Petersburg, Southside, Virginia and Tennessee, or the Virginia and Kentucky Railroad Companies. The third section authorized the commissioners to receive subscription to the stock of the new company and to this end treat with the stockholders of the Norfolk and Petersburg, Southside, Virginia and Tennessee, and Virginia and Kentucky Railroad Companies as to the value of the stock of the several companies and to receive the same at this agreed valuation in payment of subscription to the capital stock of the Atlantic, Mississippi and Ohio Railroad Company. The fourth section provided that whenever it should appear to the satisfaction of the commissioners that a majority of the stock as to shares held in the Norfolk and Petersburg, Southside, Virginia and Tennessee, and Virginia and Kentucky Railroad Companies *or that held in a majority of the said companies* by others than the State *had been subscribed to the capital stock of the Atlantic, Mississippi and Ohio Railroad Company*, then notice of such fact should be given for the purpose of organization; and, this being done, the fifth section provided for the organization of the Atlantic, Mississippi and Ohio Railroad Company and breathed into it the life of a body corporate and politic, vested it with all the rights and privileges conferred by the laws of the Commonwealth, and subjected it to such laws of the Commonwealth as applied to the railway corporations thereof generally, namely—as we contend and the supreme court of Virginia decided—the act of January 14, 1853, found in the Code of 1873, chapter 61, section 18.

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